

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
COMMONWEALTH EDISON COMPANY, ) No. 10-0467  
 )  
Proposed general increase in )  
electric rates. (Tariffs filed )  
June 30, 2010) )

Chicago, Illinois  
January 20, 2011

Met, pursuant to notice, at Chicago.

BEFORE:

CLAUDIA SAINOT and GLENNON P. DOLAN,  
Administrative Law Judges

1 APPEARANCES:

2 MR. RICHARD BERNET  
MR. MICHAEL PABIAN

3 MR. EUGENE H. BERNSTEIN  
10 South Dearborn Street, Suite 4900  
4 Chicago, Illinois 60603  
-and-

5 ROONEY RIPPPIE & RATNASWAMY, LLP, by  
MR. E. GLENN RIPPPIE

6 350 West Hubbard Street, Suite 430  
Chicago, Illinois 60654  
7 -and-

8 SIDLEY AUSTIN, LLP, by  
MR. DALE E. THOMAS

9 One South Dearborn Street  
Chicago, Illinois 60603  
appearing for Commonwealth Edison Company;

10 ILLINOIS COMMERCE COMMISSION

11 MS. JENNIFER LIN,  
MS. MEGAN C. McNEILL

12 MR. JOHN FEELEY,  
160 North LaSalle Street, Suite C-800  
13 Chicago, Illinois 60601  
appearing for ICC Staff;

14 MR. ROBERT KELTER

15 35 East Wacker Drive, Suite 1600  
Chicago, Illinois 60601  
16 appearing for ELPC;

17 LUEDERS ROBERTSON & KONZEN, by,  
MR. ERIC ROBERTSON

18 P.O. Box 735 1939 Delmar Avenue  
Granite City, Illinois 62040  
19 appearing for IIEC;

20

21

22

1 APPEARANCES: (CONT'D)

2

3 DLA PIPER U.S., LLP, by  
4 MR. CHRISTOPHER J. TOWNSEND  
5 MR. CHRISTOPHER N. SKEY  
6 MR. MICHAEL R. STRONG  
7 203 North LaSalle Street, Suite 1900  
8 Chicago, Illinois 60601  
9 appearing for REACT;

10 MS. KRISTIN MUNSCH  
11 MS. CHRISTIE HICKS  
12 309 West Washington Street, Suite 800  
13 Chicago, Illinois 60606  
14 appearing for Citizens Utility Board;

15 MS. KAREN LUSSON  
16 MS. JANICE DALE  
17 MS. SUSAN SATTER  
18 MR. MICHAEL BOROVNIK  
19 100 West Randolph Street, 11th Floor  
20 Chicago, Illinois 60601  
21 for the People of the State of Illinois.

22

23 SULLIVAN REPORTING COMPANY, by  
24 Alisa A. Sawka, CSR  
25 Tracy Overocker, CSR  
26 Carla Camiliere, CSR

1	<u>I N D E X.</u>					
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
3	VAL JENSEN					
4		2306	2308			2325
5					2327	
6	KATHRYN HOUTSMA			2327		
7		2332	2338			
8			2349			
9	VAL ZJENSEN					
10		2306	2308			2325
11			2327	2327		
12	KATHRYN HOUTSMA					
13		2332	2338			
14			2349			
15			2405			2408
16			2410			
17	MARTIN FRUEHE					
18		2417	2426			
19			2485			
20			2498			2512
21				2514		2515
22	EDWARD BODMER					
23		2517	2520			
24	BONITA PEARCE					
25		2524	2527			
26			2531			
27			2544			

17 In Camera Pages 2498 - 2506

	<u>E X H I B I T S</u>		
	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
18	REACT		
19	#1.0C,1.1-1.8&4.0		2306
20	#1.0C,1.1-1.8,4.0		2306

	CONTINUED		
	<u>Number</u>	<u>E X H I B I T S</u> <u>For Identification</u>	<u>In Evidence</u>
	COMED		
3	#17.0		2307
	#27.0,42.0,66.0,35.0R		2331
4	35.1-35.8,59.0-59.7		2331
	#6.0R,6.2R,6.3,29.1		2337
5	29.2,29.3-29.9		2337
	#17.0(R)		2307
6	#27.0,42.0,66.0,35.0R35.1-35.8&59.0		2331
	#6.0R-6.2R,6.3,29.0,29.1,29.2-29.9		2337
7	#30.0-30.4(B),56.0-56.7		2421
	#44.0(R),44.1(R),18.0,18.1		2508
8	#23		2568
	ELPC		
9	#1.0	2314	2320
	#2.0	2315	2320
10	#3.0		2320
	#1.0		2314
11	#1.0,2.0&3.0		2320
	AG		
12	#20	2315	2352
	#24	2373	2405
13	#25	2396	2405
	#23	2352	2405
14	#26	2398	2484
	#29	2432	2484
15	#30	2460	2484
	#31&32	2467	2484
16	#33	2479	2484
	#5.0R RDC1-17,A,9.0R,RDC-1-17,9.1		2510
17	#34		2570
	STAFF		
18	#15		2411
	COMED/DLH/ME/AG		
19	#2.40-TS 14.0 FROM PG 2415-2417		2417
	STAFF		
20	#16	2494	2506
	#3.0R,3.01-3.11,18.0,18.01-18.09		2526
21	AG/CUB		
	#60,6.01-6.17,11.0,11.1-11.5		2511
22	CITY		
	#1.0,2.0,2.1		2520

1           JUDGE DOLAN: By the direction and authority of  
2     the Illinois Commerce Commission, I call Docket  
3     No. 10-0467, Commonwealth Edison Company, a proposed  
4     general increase in electric rates to order.

5                     Would the parties please identify  
6     themselves for the record.

7           MR. BERNET: On behalf of Commonwealth Edison  
8     Company, Richard Bernet, Michael Pabian and Gene  
9     Bernstein, 10 South Dearborn, Suite 4900, Chicago  
10    60603.

11          MR. THOMAS: And also on behalf of Commonwealth  
12    Edison Company, Glenn Rippie, the firm of Rooney  
13    Rippie & Ratnaswamy, LLP, 350 West Hubbard, Suite  
14    430, Chicago 60654.

15          MS. LIN: On behalf of Staff of the Illinois  
16    Commerce Commission, Jennifer Lin, Megan McNeill and  
17    John Feeley, 160 North LaSalle, Suite C-800, Chicago,  
18    Illinois 60601.

19          MS. McNEILL: On behalf of the Environmental  
20    Law & Policy Center, Robert Kelter, 35 East Wacker,  
21    Suite 1600, Chicago 60601.

22          MR. ROBERTSON: On behalf of the Illinois

1 Industrial Energy Consumers, Eric Robertson, Lueders  
2 Robertson & Konzen, P.O. Box 735, 1939 Delmar,  
3 Granite City, Illinois 62040.

4 MR. SKEY: Good morning. On behalf of the  
5 REACT Coalition, Christopher Townsend, Christopher  
6 Skey and Michael Strong, DLA Piper U.S. LLP, 203  
7 North LaSalle, Chicago, Illinois 60601.

8 MS. MUNSCH: On behalf of Citizens Utility  
9 Board, Kristin Munsch, M-u-n-s-c-h and Christie  
10 Hicks, 309 West Washington Street, Suite 800,  
11 Chicago, Illinois 60606.

12 MR. RIPPPIE: On behalf of the People of the  
13 State of Illinois, Karen Lusson, Janice Dale, Susan  
14 Satter and Michael Borovik, 100 West Randolph, 11th  
15 Floor, Chicago, Illinois 60601.

16 JUDGE DOLAN: Are there any other appearances?

17 Let the record reflect there are none.

18 Okay. Before we start with our first  
19 witness we're going to let Mr. Skey introduce some  
20 evidence into the record.

21 MR. SKEY: Thank you, your Honor.

22 Chris Skey on behalf of the REACT

1 Coalition.

2 Our witness, Bradley O. Fults, all  
3 cross-examination was waived with respect to  
4 Mr. Fults so we would like to introduce his written  
5 testimony into the record via verification. In  
6 particular we have today with us copies of the  
7 corrected direct testimony of Mr. Fults, which was  
8 filed on e-Docket as REACT Exhibit 1.0C on  
9 December 27th, 2010. That testimony is accompanied  
10 by REACT Exhibits 1.1 through 1.8, all of which were  
11 filed on e-Docket on November 19th, 2010. In  
12 addition, we have with us today copies of the  
13 rebuttal testimony of Bradley O. Fults, which was  
14 filed on e-Docket as REACT Exhibit 4.0 on  
15 December 30th, 2010. In addition, I have a  
16 verification of Bradley O. Fults dated January 19th,  
17 2011, which we will file later today on e-Docket.

18 And we would move for the admission of  
19 REACT Exhibit 1.0C together with REACT Exhibits 1.1  
20 through 1.8 and REACT Exhibit 4.0.

21 JUDGE DOLAN: Any objections?

22 MR. RIPPKE: No, your Honor.



1 JUDGE SAINSOT: All right. Then REACT  
2 Exhibit 1.0C and 1.1 through 1.8 will be admitted  
3 into the record and REACT 4.0 along with the  
4 verification will also be admitted into the record.  
5 Thank you.

6 (Whereupon, REACT Exhibit  
7 Nos. 1.0C, 1.1 through 1.8, 4.0  
8 were admitted into evidence.)  
9 (Witness sworn.)

10 MR. SKEY: Thank you, your Honor.

11 MR. PABIAN: Your Honor, may I approach?

12 JUDGE DOLAN: You can.

13 VAL R. JENSEN,  
14 called as a witness herein, having been first duly  
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION  
17 BY  
18 MR. PABIAN:

19 Q Good morning, Mr. Jensen.  
20 A Good morning.  
21 Q Would you please state your name for the  
22 record.

1           A     Val Jensen.

2           Q     And in front of you, Mr. Jensen, is a  
3     document labeled ComEd Exhibit 17.0 revised. Is that  
4     a copy of your direct testimony that has been filed  
5     previously in this docket?

6           A     Yes, it is.

7           Q     Was that document prepared by you or under  
8     your direction?

9           A     Yes, it was.

10          Q     If I asked you all of the questions  
11     contained in that document today, would your answers  
12     be the same as reflected on that document?

13          A     Yes, they would.

14          MR. PABIAN: Your Honor, at this time ComEd  
15     would move into evidence ComEd Exhibit 17.0 revised,  
16     the direct testimony of Val R. Jensen.

17          JUDGE DOLAN: Any objections?

18                     Hearing none, then ComEd Exhibit 17.0  
19     revised will be admitted into the record.

20                             (Whereupon, ComEd Exhibit  
21                             No. 17.0 revised was admitted  
22                             into evidence.)

1           MR. PABIAN: Thank you.

2                   Mr. Jensen is now available for

3 cross-examination.

4           JUDGE DOLAN: Mr. Kelter.

5                   CROSS-EXAMINATION

6                   BY

7                   MR. KELTER:

8           Q     Good morning, Mr. Jensen.

9           A     Good morning.

10          Q     Turning -- well, I'm Rob Kelter, attorney

11 for the Environmental Law & Policy Center.

12                   Mr. Jensen, turning to Page 2 of your

13 testimony, Line 38, you state that you're responsible

14 for managing and the implementation of ComEd's energy

15 efficiency and demand response portfolio; correct?

16          A     Correct.

17          Q     During the time you've managed the energy

18 efficiency programs, have you mentioned these

19 programs to the best of your ability?

20          A     I have.

21          Q     And during the course of the last three

22 years has ComEd made the best effort possible to

1     achieve energy efficiency savings for customers under  
2     the programs in its plan?

3             A     Yes.

4             Q     Is ComEd committed to making its best  
5     effort to help customers save energy under the Year 4  
6     to 6 plan recently approved in Docket 10-0570?

7             A     Yes.

8             Q     In regards to the 3-year plan submitted by  
9     ComEd in Docket 10-0570, the targets set under the  
10    plan were reduced from the targets set by the  
11    legislature; correct?

12            A     The targets per the legislation were  
13    reduced to be consistent with the spending cap.

14            Q     And ComEd agreed to those adjusted targets;  
15    correct?

16            A     Correct.

17            Q     ComEd participates in the SAG, does it  
18    not -- I'm sorry -- in the Stakeholder Advisory Group  
19    known as the SAG?

20            A     Yes.

21            Q     In fact, at Page 8 of your testimony,  
22    Line 155, you refer to the stakeholder process as a

1 collaboration, do you not?

2 A Which line? I'm sorry.

3 Q Line 155.

4 A Yes.

5 Q And at Line 175 you testify that ComEd has  
6 worked closely with the SAG on many issues including  
7 evaluation methodologies and protocols, evaluation  
8 work plan development and review, portfolio and  
9 program statuses and updates, portfolio and program  
10 design changes, demand response programs and  
11 potential market studies.

12 That's virtually all aspects of the EE  
13 programs; correct?

14 A Virtually, yes.

15 Q And would you say the relationship between  
16 ComEd and the SAG partners has been a positive one?

17 A Yes.

18 Q Is it fair to say that the parties have  
19 gotten along remarkably well?

20 A It calls for speculation, I guess; but,  
21 yes.

22 Q You also note in your testimony that ComEd

1     beat the targets for Year 1 of it's plan; correct?

2             A     Correct.

3             Q     And at Page 15, Line 329 of your testimony,

4     you also note that ComEd believes it achieved its

5     Plan Year 2 statutory energy savings goal of

6     312,339 megawatt hours under budget; correct?

7             A     Correct.

8             Q     And ComEd recovers the costs for the energy

9     efficiency programs through an automatic adjustment

10    clause; correct?

11            A     We recover the program costs through an

12    automatic adjustment clause, yes.

13            Q     Do you know, did ComEd request in the

14    legislation that provision that it recover its costs

15    through that automatic adjustment clause?

16            A     Honestly, I don't know. I wasn't here at

17    the time.

18            Q     Would you agree that it's advantageous to

19    the Company to recover the costs through an automatic

20    adjustment clause?

21            A     Yes.

22            Q     You're aware that there have been

1 discussions over the course of the last three years  
2 about whether an independent third party should be  
3 running the energy efficiency programs rather than  
4 ComEd, aren't you?

5 MR. PABIAN: Excuse me, your Honor.

6 Just a clarification, what do you mean  
7 "discussions"?

8 MS. McNEILL: That there have been -- I'll say  
9 discussions amongst the parties in the SAG.

10 MR. PABIAN: Rob, are you asking him if there  
11 were questions at the SAG meetings?

12 MS. McNEILL: I'm asking if he's aware that  
13 anybody -- that any of the parties in the SAG have  
14 discussed over the course of the last three years  
15 whether independent third parties should be running  
16 the energy efficiency programs rather than ComEd.

17 MR. PABIAN: Are you asking him about the  
18 discussions within that he's been involved in?

19 MS. McNEILL: I actually -- the question is,  
20 are you aware that there have been those discussions?

21 THE WITNESS: Honestly, I am not. I assume  
22 those discussions ended with the legislation.

1 BY MS. MCNEILL:

2 Q ComEd wants to run the energy efficiency  
3 programs, doesn't it?

4 A Yes.

5 Q And ComEd views the programs as a positive  
6 way to connect with its customers, doesn't it?

7 A Yes.

8 Q In fact, ComEd has done a significant  
9 amount of marketing related to energy efficiency,  
10 hasn't it?

11 A Related to the energy efficiency programs  
12 we offer, yes.

13 Q And has ComEd done marketing related to  
14 energy efficiency that's not part of the programs?

15 A Ever?

16 Q In the last three years.

17 A ComEd Communications has sponsored a summer  
18 advertising campaign, which is independent of the  
19 energy efficiency programs, although they've used  
20 references to those programs in the content.

21 Q So they've -- they've done marketing  
22 related to energy efficiency?



1           A     Yes.

2           Q     Beyond the scope of the programs?

3           A     Yes.

4           Q     I want to show you something we'll mark as

5   ELPC Cross-Exhibit 1.0.

6                               (Whereupon, ELPC Cross-Exhibit

7                               No. 1.0 was marked for

8                               identification.)

9   BY MS. McNEILL:

10          Q     Sorry it's not a clearer picture.

11                       With this -- are you familiar with

12   this billboard or sign?

13          A     Not specifically, no.

14          Q     Would it be fair to say that this would be

15   part of that marketing that you just described that's

16   not directly related to the energy efficiency

17   program?

18          MR. PABIAN:  Your Honor, at least I would

19   object at this point.  I'm not sure where this is

20   going and the witness has already said he's not

21   familiar with the sign.  So, I'm --

22          MS. McNEILL:  Well, I didn't -- but I can still

1     ask whether he's -- whether this looks like something  
2     that was part of this marketing campaign that he just  
3     talked about done by ComEd Communications. I think  
4     he can tell that by looking at it. If he can't then,  
5     you should just answer "no."

6             JUDGE DOLAN: Overrule the objection.

7             THE WITNESS: It looks to me like some of the  
8     collateral that was used in that advertising  
9     campaign.

10            BY MS. McNEILL:

11            Q     And is it accurate to say that there were a  
12     number of signs and billboards around Chicago with  
13     similar messaging?

14            A     Yes.

15            Q     And do you know how much money ComEd spent  
16     on that marketing?

17            A     No.

18            Q     I'd like to show you something else.

19            MS. McNEILL: Mark this as ELPC Exhibit 2.0.

20                             (Whereupon, ELPC Cross-Exhibit  
21                             No. 2.0 was marked for  
22                             identification.)

1 BY MS. McNEILL:

2 Q Are you familiar with the sticker shown in  
3 this exhibit?

4 A I am.

5 Q This sticker was used to promote ComEd  
6 compact fluorescents in grocery stores, hardware  
7 stores and other stores across ComEd's service  
8 territory; is that correct?

9 A Well, technically, it wasn't to promote  
10 ComEd fluorescents. It was to promote the program  
11 that provided discounts on fluorescent lights.

12 Q Fair enough.

13 The sticker does say "low price  
14 brought to you by ComEd"; correct?

15 A Correct.

16 Q And is it fair to say that ELPC and other  
17 members of the SAG objected to the use of these  
18 stickers because it sent customers the signal that  
19 ComEd was saving the customers money; is that  
20 correct?

21 A I recall that ELPC objected, yes.

22 Q And you agreed to stop using the stickers;

1 correct?

2           A     What we agreed to do is include language on  
3 all collateral that we could that clearly indicated  
4 that the programs were paid for by customers of ComEd  
5 pursuant to the legislation.

6                     The issue with the sticker, and you  
7 can see it if you compare it with the sticker next to  
8 it is it's very small. And the ability to have that  
9 language I just suggested to you show up on those  
10 stickers was -- it was very difficult to have that  
11 represented on these small stickers. But you will  
12 find it on virtually all other pieces of collateral.

13           MS. McNEILL: Your Honor, I don't --

14 BY MS. McNEILL:

15           Q     Well, that's your characterization that the  
16 sticker is small; correct? It's actually bigger than  
17 the unit price sticker next to it; is that correct?

18                     I'm sorry. I asked two questions so  
19 let me strike that.

20                     It's actually your characterization  
21 that the sticker is small; correct?

22           A     Correct.

1           Q     And it's actually bigger than the sticker  
2     next to it with the unit price; is that correct?

3           A     It's larger than the one to its immediate  
4     right, yes.

5           Q     Mr. Jensen, I'd also like to show you a  
6     group of ComEd press releases marked as ELPC  
7     Exhibit 4.0.

8           JUDGE DOLAN:   Did you have a 3?

9           MS. McNEILL:   Pardon?

10          JUDGE DOLAN:   You didn't have an Exhibit 3.

11          MS. McNEILL:   Oh, I decided not to use it.  I  
12     made a mistake.  We could mark this 3.0.

13          JUDGE SAINSOT:   Well, where -- have you marked  
14     these?

15          MS. McNEILL:   No.

16          JUDGE DOLAN:   No, he just -- he gave us the  
17     original with the -- this was one.

18          JUDGE SAINSOT:   So why don't we call that 3.

19          MS. McNEILL:   We'll call that 3.0.

20     BY MS. McNEILL:

21           Q     Mr. Jensen, are you familiar with these  
22     press releases?

1           A     I have seen most of them, I believe, yes.

2           Q     Is it accurate to say that they relate to

3     energy efficiency?

4           A     Yes.

5           Q     And is it accurate to say they were

6     distributed to the press?

7           A     I honestly don't know that.  When I see

8     these, I tend to see them before they're final and

9     sent anywhere.  So I assume they were, but I don't

10    know for a fact.

11          Q     And is it accurate to say that the Company

12    has done several billing inserts over the last three

13    years related to energy efficiency?

14          A     Yes.

15          MS. McNEILL:  That's all the questions I have.

16          JUDGE DOLAN:  Thank you.

17          MS. McNEILL:  I would like to -- can I move for

18    the admission of the cross-exhibits now?

19          JUDGE DOLAN:  Yeah.

20          MS. McNEILL:  Your Honor, I'd like to move for

21    the admission of ELPC Cross-Exhibits 1.0, 2.0 and

22    3.0.

1 JUDGE DOLAN: Any objections?

2 MR. PABIAN: No objections.

3 JUDGE DOLAN: All right. Then ELPC

4 Cross-Exhibits 1.0, 2.0 and 3.0 will be admitted into  
5 the record.

6 (Whereupon, ELPC Cross-Exhibit  
7 Nos. 1.0, 2.0 and 3.0 were  
8 admitted into evidence.)

9 CROSS-EXAMINATION

10 BY

11 MS. LUSSON:

12 Q Good morning, Mr. Jensen.

13 A Good morning.

14 Q I just have a few questions.

15 At Page 7 of your testimony, Lines 151  
16 through 154 you reference the risks associated with  
17 ComEd's provision of energy efficiency programs.

18 Do you see that there?

19 A Yes.

20 Q Now, I think in response to Mr. Kelter's  
21 testimony you agreed that the Company as part of its  
22 energy efficiency programs is out in the community;

1 is that correct?

2 A Yes.

3 Q And is interacting with the public as a --

4 part of the energy efficiency programs?

5 A Yes.

6 Q And providing services that help people

7 save money; is that right?

8 A Yes.

9 Q And would you agree then that there's a

10 certain amount of goodwill that the Company receives

11 as a result of these activities?

12 A I don't know.

13 Q Has there ever been any sort of discussion

14 about the promotion of the programs in your -- within

15 your work responsibility that that -- that references

16 the positive benefits of providing energy efficiency?

17 A No, we focus our market research on whether

18 these activities that you reference have boosted

19 awareness among our customers of ComEd's energy

20 efficiency programs. But whether it has an effect on

21 favorability is not something my group worries about.

22 Q Okay. And is it -- you're generally



1 familiar with Section 8-103 of the Act, aren't you,  
2 which is the energy efficiency provision?

3 A I am.

4 Q And you would agree there is a provision in  
5 the Act that states that the responsibility for  
6 implementing energy efficiency measures of the  
7 utility shall be transferred to the Illinois Power  
8 Agency if after three years or in any subsequent  
9 three-year period the utility fails to meet the  
10 efficiency standards specified in Subsection B as  
11 modified by the savings cap?

12 A Yes.

13 Q And I think in response to one of  
14 Mr. Kelter's questions you indicated the Company is  
15 interested in retaining the provision of energy  
16 efficiency programs. Is that fair to say?

17 A I don't know if I would call his question  
18 being whether we're interested in retaining as so  
19 much as whether we want to implement these; and I  
20 answered "yes."

21 Q And is the Company interested in retaining  
22 energy efficiency programs?

1           A     Yes.

2           Q     And it's interested in retaining them even  
3     in light of the -- for lack of a better term --  
4     difficulties that the Company indicated it would have  
5     for Plan Years 4 through 6 as a result of the  
6     spending cap?

7           A     I'm not sure I understand your question.

8           Q     The Company is still interested in  
9     retaining them in light -- even -- notwithstanding  
10    the fact that the Company has in Plan Years 5 and 6  
11    stated that it may have difficulty or will be unable  
12    to achieve those savings goals as a result of the  
13    spending cap?

14          A     Well, I don't see our interest in  
15    administering these programs as related to whether or  
16    not we can achieve the statutory targets absent the  
17    spending cap. So, I guess, I'm not quite following.

18          Q     Well, let me ask you this: If, in fact,  
19    the Company was unable to meet its savings goals for  
20    a period of three years and whatever reason the  
21    spending cap wasn't an issue and, in fact, the  
22    Company was faced with being in the position of

1     handing the programs over to the Illinois Power  
2     Authority, is that something -- is that a position  
3     the Company wants to be in or is it a position that  
4     it plans to avoid being in going forward?

5           A     The Company would not want to be in that  
6     position.

7           Q     In fact, in the recent -- if you know, in  
8     the recent Illinois Power Authority procurement  
9     docket the Illinois -- ComEd took the position that  
10    the IPA has -- lacks the authority under the statute  
11    to provide energy efficiency programs; is that  
12    correct?

13          A     I'm not really familiar with the position  
14    we took in that docket.

15          Q     Okay. Now, if you know, has the Company  
16    assessed the value of any goodwill it derives from  
17    the provision of its energy efficiency programs? Has  
18    that ever been quantified by anyone in the Company or  
19    outside of the Company, if you know?

20          A     Not to my knowledge.

21               MR. RIPPIE: Thanks very much, Mr. Jensen.

22               JUDGE DOLAN: Thank you.

1 Any redirect?

2 JUDGE SAINSOT: I actually have a couple of  
3 questions for Mr. Jensen.

4 EXAMINATION

5 BY

6 JUDGE SAINSOT:

7 Q Good morning, Mr. Jensen.

8 A Good morning.

9 Q I noticed in your testimony that you state  
10 that because of the -- this is on Page 7 of ComEd's  
11 Exhibit 17.0 revised -- because of the success of  
12 ComEd's aggressive energy efficiency program, ComEd  
13 sales are adversely impacted.

14 How do you know that?

15 A Well, to the extent we're successful, we're  
16 reducing the number of kilowatt hours that are sold.

17 Q How do you know that the reduction of  
18 kilowatt hours sold is as a result of the energy  
19 efficiency program?

20 A The statute requires that we employ a  
21 third-party evaluator to determine how many savings  
22 are, in fact, due specifically to the energy

1 efficiency programs.

2 MR. PABIAN: Your Honor, if I may just to --

3 Val, you might just explain why that  
4 is done and how that is done in order to satis- -- to  
5 verify that that -- that that satisfies the goal.

6 THE WITNESS: The legislature we believe  
7 intended and all parties have agreed that it's very  
8 important to be able to determine, in fact, how many  
9 kilowatt hours are attributable to the programs  
10 versus some other factors. So evaluators are brought  
11 in. These are contractors. We pay for them, but the  
12 stakeholders have reviewed our process for hiring  
13 them and the Commission ultimately has oversight.

14 These evaluators review each program  
15 that we implement and make a determination using a  
16 variety of the statistical techniques as to how much  
17 energy saving is actually attributable to specific  
18 programs.

19 JUDGE SAINSOT: Okay. Thank you.

20 No further questions.

21 MR. RIPPIE: May I, your Honors? May I ask one  
22 follow-up question in light of that testimony?

1 JUDGE SAINSOT: Go ahead.

2 RECROSS-EXAMINATION

3 BY

4 MS. LUSSON:

5 Q Mr. Jensen, it's correct that the formal

6 evaluation -- the dockets that review the formal

7 evaluations have not been completed for Program Years

8 2 and 3; is that correct?

9 A I think that is correct, yes.

10 MR. RIPPKE: Okay. Thank you.

11 JUDGE DOLAN: Mr. Pabian, any redirect?

12 MS. SATTER: May I have a minute, your Honor?

13 JUDGE DOLAN: Yes.

14 Let's go off the record.

15 (Whereupon, a discussion was had

16 off the record.)

17 JUDGE DOLAN: Back on the record.

18 MS. SATTER: Yes, your Honor.

19 REDIRECT EXAMINATION

20 BY

21 MR. PABIAN:

22 Q Mr. Jensen, in response to a question from

1 Mr. Kelter I think you indicated that in the second 3  
2 year plan filing that was recently approved by the  
3 Commission, the goals were adjusted to account for  
4 the spending screen; is that --

5 A Correct.

6 Q Do you recall that question?

7 A Yes.

8 Q Is it correct that the goals in that plan  
9 were adjusted -- that plan covers -- Plan Years 4, 5  
10 and 6; is that correct?

11 A Correct.

12 Q And that the goals in that plan were  
13 adjusted to differ from the statutory targets for  
14 only Plan Years 5 and 6; is that correct?

15 A That's correct.

16 MR. PABIAN: That's all.

17 MS. LUSSON: I'm okay with that.

18 JUDGE DOLAN: Thank you, Mr. Jensen.

19 (Whereupon, a discussion was had  
20 off the record.)

21 MR. RIPPIE: Your Honors, as you may have been  
22 aware, there have been ongoing discussions between

1 the Illinois Attorney General's Office, Citizens  
2 Utility Board and Commonwealth Edison regarding a  
3 group of testimonies that were affected by decisions  
4 rendered by the Commission. In response we had a  
5 petition for interlocutory review. We believe we've  
6 resolved those.

7                   They will affect two -- testimonies of  
8 two witnesses that have already been filed. It is  
9 our intention to file on e-Docket today and to  
10 provide your Honors with hard copy as well the  
11 revised versions of the Hemphill direct testimony,  
12 the Hemphill rebuttal testimony and the -- I'm  
13 sorry -- the Hemphill direct and the Guerra direct  
14 and rebuttal testimonies as well as to submit copies  
15 of Dr. Andrade's testimony and Mary Anne Emmons'  
16 testimony that also reflect corresponding deletions.

17                   But the few minutes we have right now  
18 there are some other testimonies that there have been  
19 no cross-examination times reserved for ComEd and I'd  
20 like to offer those.

21           JUDGE SAINSOT: Just for the record, the  
22 revisions concern the alt reg docket?



1           MR. RIPPIE:   Correct.   Deletion of language  
2   that refers to -- directly or -- explicitly or  
3   implicitly to the alt reg docket and the alt reg  
4   proposal.

5                       The first is the testimony of Mr. Dean  
6   Apple.   It's ComEd Rebuttal Exhibit 27.0.   It was  
7   filed on e-Docket on November 22nd, 2010.   And I have  
8   copies here today, which I'll bring up to ALJ Teague  
9   in a moment along with his verification.

10                    The second is ComEd's Witness Stephen  
11   Lezniak.   That is ComEd -- his rebuttal testimony is  
12   ComEd Exhibit 42.0, filed on e-Docket on November  
13   22nd, 2010.   And his surrebuttal testimony is ComEd  
14   Exhibit 66.0, filed on January 3rd of 2011.

15                    And the next is Witness Donohue, his  
16   rebuttal consists of ComEd Exhibit 35.0, filed -- I'm  
17   sorry -- 35.0 revised, filed on December 20th, 2010,  
18   together with ComEd Exhibits 35.1 through 35.8, filed  
19   on e-Docket on November 22nd of 2010.   His  
20   surrebuttal testimony is Exhibits 59.0 through 59.7  
21   all filed on e-Docket on January 3rd of 2011.   I note  
22   that there are both confidential and public versions

1 of Exhibits 59.2, 59.3, 59.6 and 59.7.

2 And at this point, we would like to  
3 offer into evidence those exhibits.

4 JUDGE SAINSOT: What was Mr. Apple's testimony?

5 MR. RIPPPIE: 27.0.

6 JUDGE SAINSOT: Any objection?

7 Hearing no objection, your motion is  
8 granted and ComEd's Exhibits 27.0, 42.0, 66.0, 35.0R,  
9 35.1 through 35.8, 59.0 through 59.7 are all entered  
10 into evidence. And I will note for the record that  
11 confidential versions of 59.2 and 59.3, 59.6 and 59.7  
12 exist.

13 (Whereupon, ComEd's Exhibit Nos.  
14 27.0, 42.0, 66.0, 35.0R, 35.1  
15 through 35.8, 59.0 through 59.7  
16 were admitted into evidence.)

17 MR. RIPPPIE: I should also tell your Honor  
18 there are two witnesses, one of which is Mr. Apple,  
19 where we have faxed or facsimile signatures but the  
20 original is in the mail or in FedEx and we'd ask  
21 leave to substitute those by filing the original with  
22 the Clerk's Office when we receive it. Thank you.

1 JUDGE DOLAN: Okay. Mr. Thomas, I believe you  
2 need to enter an appearance for the record.

3 MR. THOMAS: I believe that's correct.

4 For Commonwealth Edison Company, the  
5 law firm of Sidley Austin, LLP, One South Dearborn  
6 Street, Chicago, Illinois 60603, by Dale E. Thomas.

7 (Witness sworn.)

8 KATHRYN M. HOUTSMA,  
9 called as a witness herein, having been first duly  
10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY

13 MR. THOMAS:

14 Q Miss Houtsma, would you please state your  
15 full name for the record.

16 A Kathryn M. Houtsma.

17 Q And by whom are you employed?

18 A I'm employed by Commonwealth Edison  
19 Company.

20 Q And what is your position there?

21 A I'm vice president regulatory projects.

22 Q Have you offered written testimony in this

1 proceeding?

2 A Yes.

3 Q The first piece of testimony that I believe  
4 you have in front of you is marked ComEd Exhibit 6.0  
5 revised. It is entitled, quote, Direct Testimony of  
6 Kathryn M. Houtsma, C.P.A., Vice President Regulatory  
7 Projects, unquote. And it consists of 54 pages of  
8 questions and answers and attached Exhibits 6.1  
9 through of 6.3.

10 Is this your direct testimony in this  
11 proceeding?

12 A Yes, it is.

13 Q Was it prepared under your direction and  
14 control?

15 A Yes.

16 Q Is it true and correct to the best of your  
17 knowledge or belief?

18 A Yes, as corrected in my rebuttal --  
19 including the corrections in my rebuttal testimony.

20 Q So subject to that qualification, if I were  
21 to ask you the same questions today, would the  
22 answers be the same?

1           A     Yes.

2           MR. THOMAS:   Your Honors, that was e-Docket  
3     filed August 27, 2010.

4     BY MR. THOMAS:

5           Q     Let me show you ComEd Exhibit 29.0, which  
6     is entitled, quote, Rebuttal Testimony of Kathryn M.  
7     Houtsma, C.P.A., Vice President Regulatory Projects  
8     Commonwealth Edison Company.   And it consists of 48  
9     pages of questions and answer and attached  
10    Exhibits 29.1 through 29.9.

11                   Is this your rebuttal testimony in  
12    this proceeding?

13          A     Yes.

14          Q     Was it prepared under your direction and  
15    control?

16          A     Yes.

17          Q     And is it true and correct to the best of  
18    your knowledge and belief?

19          A     Yes, subject to a correction that was  
20    acknowledged and corrected in surrebuttal testimony.

21          Q     So, again, subject to that qualification,  
22    if I were to ask you the same questions today, would

1 your answers be the same?

2 A Yes.

3 MR. THOMAS: And, your Honors, that was  
4 e-Docket filed November 22, 2010.

5 BY MR. THOMAS:

6 Q Let me show you now ComEd Exhibit 55.0  
7 second revised. It is entitled, quote, Surrebuttal  
8 Testimony of Kathryn M. Houtsma, C.P.A., Vice  
9 President Regulatory Projects Commonwealth Edison  
10 Company, unquote. It consists of 37 pages of  
11 questions and answers and attached Exhibits 55.0  
12 through 55.8.

13 Is this your surrebuttal testimony in  
14 this proceeding?

15 A Yes, it is.

16 Q And was it prepared under your direction  
17 and control?

18 A Yes.

19 Q And is it true and correct to the best of  
20 your knowledge or belief?

21 A Yes.

22 Q So if I were to ask you the same questions

1 today, would your answers be the same?

2 A Yes.

3 MR. THOMAS: And, your Honors, this was  
4 e-Docket filed January 19th, 2011.

5 I hereby move ComEd Exhibit 6.0  
6 revised, 29.0 and 55.0 second revised into the  
7 record, and I tender Miss Houtsma for  
8 cross-examination.

9 JUDGE SAINSOT: Any objection?

10 MR. FEELEY: Counsel, those -- her surrebuttal  
11 testimony reflects the ALJs' ruling on Staff's motion  
12 to strike --

13 MR. THOMAS: It does. That's why it was  
14 e-Docket filed yesterday.

15 JUDGE DOLAN: All right. Then hearing no  
16 objections, ComEd 6.0 revised, along with 6.1  
17 revised -- and, again, we're going to point out  
18 there's a confidential and a public versions --

19 MR. THOMAS: There are.

20 JUDGE DOLAN: Okay. And then 6.2 revised and  
21 6.3 will be admitted into the record, 29.0 corrected,  
22 along with 29.1, 29.2 corrected and 29.3 through

1     29- -- I'm looking at your cover sheet for 29 and  
2     you -- the last one you have you got 29.8, then you  
3     have 28.9.

4             MR. THOMAS:   It must be a --

5             JUDGE DOLAN:   So should it be 29.9, I assume?

6             MR. THOMAS:   Correct.

7             JUDGE DOLAN:   -- so then 29.3 through 29.9  
8     corrected.

9             MR. THOMAS:   Correct.

10            JUDGE DOLAN:   And then 55.0 second corrected,  
11     55.1 through 55.7 will be admitted into the record.

12                            (Whereupon, ComEd Exhibit 6.0R,  
13                            6.1R, 6.2R, 6.3, 29.0, 29.1,  
14                            29.2, 29.3 through 29.9 were  
15                            admitted into evidence.)

16            MR. THOMAS:   Thank you, your Honors.

17            JUDGE DOLAN:   Thank you.

18                            Mr. Robertson.

19            MR. ROBERTSON:   Thank you.

20

21

22



1 CROSS-EXAMINATION

2 BY

3 MR. ROBERTSON:

4 Q Good morning, Miss Houtsma.

5 My name is Eric Robertson. I

6 represent the Illinois Industrial Energy Consumers.

7 A Good morning.

8 Q You have identified in your revised direct

9 testimony the test year selected by ComEd in this

10 case; is that correct?

11 A Correct.

12 Q And are you aware that the Commission's

13 rules provide a choice of historical or future test

14 years?

15 A Yes.

16 Q Are you aware that some of the Commission's

17 test years rules apply to both historical and future

18 test year filings?

19 MR. THOMAS: Excuse me. Could we have that

20 repeated for the record? I was giving a piece of --

21 copy of a piece of testimony for another party in the

22 proceeding.

1                   Could you simply repeat the question?

2           MR. ROBERTSON: I'm sorry. I'm getting at an  
3 age where I get confused real easy. So...

4 BY MR. ROBERTSON:

5           Q     Let me ask it this way: Are you aware that  
6 some of the Commission test years rules apply to both  
7 historical and future test year filings?

8           A     I'm aware that there are Commission rules  
9 that apply to both future test years filings as well  
10 as historical test year filings, yes.

11          Q     And are you -- or would you agree that some  
12 apply only to historical test year cases?

13          A     Yes.

14          Q     And would you agree that some apply to only  
15 future test year cases?

16          A     Yes.

17          Q     Now, ComEd -- were you involved in the  
18 decision to select the test year for this case?

19          A     I did not make the ultimate decision; but I  
20 was part of a group that considered various  
21 alternatives, yes.

22          Q     Now, would you agree that some of ComEd's

1 choices of a test year may have been limited by  
2 restrictions in the Commission's test year rules --  
3 let me state this a different way.

4 MR. THOMAS: Object --

5 BY MR. ROBERTSON:

6 Q Would you agree that, at least in part,  
7 ComEd's selection of a test year in this case was  
8 determined on the basis of consideration of what  
9 restrictions applied to a future test year and what  
10 restrictions applied to a historic test year?

11 MR. THOMAS: Objection. No foundation.

12 JUDGE SAINSOT: Just rephrase, Mr. Robertson.

13 BY MR. ROBERTSON:

14 Q Did the restrictions that apply to test  
15 year rules play any part in ComEd's decision on the  
16 selection of a test year for this case?

17 MR. THOMAS: To the witness's knowledge.

18 MR. ROBERTSON: Say it again.

19 MR. THOMAS: To the witness's knowledge.

20 MR. ROBERTSON: She's already testified she's  
21 participated in the selection process and she's the  
22 one who's identified the test year and the reasons

1     for selecting same.

2             MR. THOMAS:  Actually, what she testified  
3     is she was not involved in the ultimate  
4     determination.  So to the extent your question  
5     depends upon the ultimate determination, she did not  
6     address it.

7             MR. ROBERTSON:  I'm asking about the process.

8             JUDGE SAINSOT:  Overruled.

9                     Continue.

10            THE WITNESS:  We considered the various  
11     requirements associated with both the future test  
12     year option as well as a historical test year option.

13                    I'm not sure what we're referring to  
14     with the term "restrictions," but we did consider the  
15     various requirements and the need to be consistent  
16     with the ICC requirements.

17     BY MR. ROBERTSON:

18            Q     As part of that process -- well, strike  
19     that.

20                    Would you -- as part of that process  
21     and your participation in that process, did the  
22     decision-makers -- or were the decision-makers aware

1     that test year rules governing this case would depend  
2     on their choice of a test year?

3           A     I'm not sure what you mean by the phrase  
4     "test year rules."

5           Q     Well, you already testified that you agreed  
6     that some test year rules apply only to future test  
7     years and some test year rules only apply to historic  
8     test years.  And were -- you were aware of that fact,  
9     were the other decision-makers aware of that fact as  
10    well?

11          A     There was a general awareness that the  
12    filing requirements are different for future test  
13    year -- or future test year than they are for a  
14    historical test year.

15          Q     Now, I'd like to talk to you about your  
16    rebuttal testimony, please.

17          JUDGE SAINSOT:  Mr. Robertson, it's probably  
18    best if you identify that.

19          MR. ROBERTSON:  ComEd Exhibit 25.0.

20          JUDGE SAINSOT:  Okay.

21    BY MR. ROBERTSON:

22          Q     And I'm looking specifically at Page 8,

1 dash, 9, Lines 158 to 165.

2 A I'm sorry. Can you repeat those line  
3 numbers.

4 JUDGE SAINSOT: You mean, Page 9,  
5 Mr. Robertson?

6 JUDGE DOLAN: He said Page 8 starting at 158.

7 JUDGE SAINSOT: Okay.

8 MR. THOMAS: What lines, Eric, again?

9 MR. ROBERTSON: 158 to 165.

10 THE WITNESS: Okay. Thank you.

11 BY MR. ROBERTSON:

12 Q Now, there -- if I'm reading this  
13 correctly, you are suggesting that as part of your  
14 response that ComEd's earned return on equity has  
15 significantly lagged the ROE authorized by the  
16 Commission; is that correct?

17 A Yes.

18 Q And that in spite of the pro forma  
19 additions, this has been the case?

20 MR. THOMAS: Objection. Vague.

21 Eric, are you asking, you know,  
22 despite the fact that they were rolled forward?

1           MR. ROBERTSON:   Yes.

2           THE WITNESS:   Yes, that's what my testimony

3   says.

4   BY MR. ROBERTSON:

5           Q     Now, would you agree that there are many

6   factors that can affect the level of ComEd's revenues

7   in a given year?

8           A     Yes.

9           Q     And would you agree that some of those

10   factors may be beyond -- may be beyond ComEd's control?

11          A     Yes.

12          Q     For example, the number of customers moving

13   into or leaving ComEd's service territory is beyond

14   ComEd's control?

15          A     Yes.

16          Q     And would you agree that some may be

17   influenced by ComEd's own actions?

18          MR. THOMAS:   What's the "some" refer to?

19          MR. ROBERTSON:   Some of the factors that affect

20   ComEd's revenues in a given year.

21          MR. THOMAS:   That's fine.

22          THE WITNESS:   Could you be more specific on

1     what type of actions.

2     BY MR. ROBERTSON:

3             Q     Sure.

4                     We just heard Mr. Jensen talk about  
5     the energy efficiency programs that ComEd has  
6     implemented. And I assume that a reduction in  
7     energy, all else equal, could mean a reduc- -- the  
8     energy consumption could mean a reduction in ComEd's  
9     revenues in a given year; is that right?

10            A     Yes.

11            Q     That's the kind of thing I'm talking about.

12                    So would you agree that some of these  
13     factors may be influenced by ComEd's own actions?

14            A     Well, if you're asking would the  
15     implementation of energy efficiency programs result  
16     in a loss in revenue, my answer would be yes.

17            Q     Okay. Now, collectively the types -- or  
18     the factors that influence ComEd's revenues in a  
19     given year may increase or decrease ComEd's revenues  
20     for that year; correct?

21            A     I'm sorry. Could you repeat that, please.

22            Q     Sure.



1           MR. ROBERTSON:   Could you read it back for her,  
2   please.

3                               (Whereupon, the record was read  
4                               as requested.)

5           THE WITNESS:   Are there factors that may  
6   increase or decrease revenues for a given year?

7   BY MR. ROBERTSON:

8           Q     Yes.

9           A     Yes.

10          Q     Now, there are also numerous factors that  
11   can affect ComEd's earned return on equity in a given  
12   year; is that correct?

13          A     Yes.

14          Q     And some of those factors may be beyond  
15   ComEd's control; is that correct?

16          A     Yes.

17          Q     Such as the overall level of economic  
18   activity and its possible effect on revenues, that  
19   would be an example?

20          A     Yes.

21          Q     And some of those factors may be within  
22   ComEd's control, like management efficiency and cost

1 savings measures; is that correct?

2 A Yes.

3 Q Now, would you agree that in any given year

4 such factors collectively may have a positive or a

5 negative effect on ComEd's earned return?

6 A Yes, ComEd's earned return may go up or

7 down from year to year depending on all the factors

8 involved, yes.

9 Q Now, last line of questions.

10 Would you agree that the level of

11 economic activity in ComEd's service territory can

12 affect the amount of electricity delivered by ComEd

13 in any given year?

14 A Yes.

15 Q And do you agree that depending upon the

16 historical or a future test year that might be

17 selected it's possible that differences in delivered

18 energy can exist between a historical and a future

19 test year?

20 A Is it possible? Yes --

21 Q Now --

22 A -- in any given year.

1           Q     I'm sorry.

2           A     Yes, it's possible load will be different  
3     in any given year.

4           Q     Would you agree that the industries or  
5     businesses in ComEd's service territory can be  
6     affected differently by economic conditions?

7           A     Yes, as a general matter, that's fine.

8           Q     Would you agree generally that depending on  
9     those economic conditions different industries or  
10    businesses can see changes in their histori- --  
11    different changes in their historical patterns of  
12    electricity usage?

13          A     Just in a very general way, I would agree.  
14    I'm not a load forecasting expert.

15          MR. ROBERTSON:   That's a good way to end our  
16    cross-examination.   Thank you, Miss Houtsma.

17          JUDGE DOLAN:   Thank you.

18          MR. STRONG:   REACT waives.

19          JUDGE DOLAN:   Oh, okay.

20                   And, Miss Dale, you said you didn't  
21    want to start and then stop; right?

22          JUDGE SAINSOT:   We can take a break now.

1 JUDGE DOLAN: All right. Well, I guess we have  
2 no choice but to take a break. So -- because I don't  
3 see anyone from AARP, so I'm assuming that they  
4 waived, too, then?

5 All right. Then as soon as the Bench  
6 Session is completed, we will be back on the record.

7 Thank you all.

8 (Whereupon, a recess was taken.)

9 (Change of reporters.)

10 CROSS-EXAMINATION

11 BY

12 MS. DALE,

13 Q Ms. Houtsma, my name is Janice Dale and I  
14 represent the Attorney General's Office and the  
15 People of the State of Illinois.

16 A Good morning.

17 Q First of all, Miss Houtsma, your testimony  
18 states that you were once employed by Exelon  
19 Corporation; is that correct?

20 A Yes.

21 Q Okay. And your position there was as of  
22 vice president of external reporting. Could you

1 explain to me exactly what your duties were in that  
2 position.

3 A In that role, I was responsible for --  
4 primarily for the reporting to the SEC for Exelon  
5 Corporation and various acc- -- oversight of various  
6 accounting matters as well.

7 Q And did those responsibilities include  
8 reporting on developments for Commonwealth Edison as  
9 well as a subsidiary of Exelon?

10 A As part of that, yes.

11 Q Okay. And in your present position, are  
12 you involved at all in the preparation of SEC reports  
13 on behalf of Commonwealth Edison?

14 A In my current role?

15 Q Yes.

16 A No. Other than -- I don't have  
17 responsibility for it other than to review various  
18 excerpts.

19 Q So are you generally familiar, though, with  
20 filings that Commonwealth Edison -- or information in  
21 reports filed by Exelon that would pertain to  
22 Commonwealth Edison?

1           MR. THOMAS:  Would you repeat that.  I'm sorry,  
2   I couldn't hear the --

3           MS. DALE:  Okay.

4   BY MS. DALE:

5           Q     Are you -- in your present position, are  
6   you familiar with information contained in SEC  
7   reports filed by Exelon Corporation that would relate  
8   to Commonwealth Edison's financial status?

9           A     I see those reports.  I review portions of  
10  them.  I'm familiar -- more familiar with more  
11  portions of them than others.

12          Q     And would some of the reports you review  
13  include 10Qs, quarterly reports, filed by Exelon?

14          A     Yes.  I see the 10Qs and, again, I have,  
15  you know, different degrees of familiarity with  
16  portions of a 10Q, it's a large report.

17          Q     In your rebuttal testimony at Page 7 --

18          JUDGE SAINSOT:  Miss Dale, could you identify  
19  that for the record.

20          MS. DALE:  It's Commonwealth Edison  
21  Exhibit 29.0 at Page 7.

22   BY MS. DALE:

1           Q     You acknowledge there that you're familiar  
2     with the September 30th opinion of the Illinois  
3     Appellate Court; is that correct?

4           A     Correct.

5           MS. DALE:   Okay.   May I approach?

6           JUDGE SAINSOT:   Yes, you may.

7           MS. DALE:   I'm presenting to the reporter what  
8     I'm asking to be marked as AG Cross Exhibit 23.

9                     (Whereupon, AG Cross  
10                    Exhibit No. 23 was  
11                    marked for identification  
12                    as of this date.)

13    BY MS. DALE:

14           Q     Miss Houtsma, I've given you -- handed you  
15     a document that we're going to call AG Cross Exhibit  
16     No. 23 and do you recognize this as an excerpt from  
17     Exelon's 10Q filed on October 22nd, 2010, for the  
18     third quarter ending September 30th, 2010?

19           A     Yes.

20           Q     Now, could you go to Page 32 of that  
21     document and the last three paragraphs on Page 32  
22     discuss the appeal of the 2007 distribution rate case

1       that you referred to earlier in your testimony.

2                       Could you please read the first two  
3       sentences of the -- next to the last paragraph into  
4       the record.

5               MR. THOMAS: I object. The witness has  
6       testified that she sees portions of 10Qs, but she  
7       doesn't address this directly in her testimony and  
8       you haven't shown that she actually reviewed this at  
9       any point or had any role in drafting this particular  
10      language. If you can connect it, that's fine.

11     BY MS. DALE:

12               Q     Are you familiar, Miss Houtsma, with this  
13     10Q at all?

14               A     I've read this, yes.

15               Q     Have you read this section?

16               A     Yes.

17               Q     Okay. Could you please read the first two  
18     sentences of the next to the last paragraph into the  
19     record.

20               A     The paragraph that begins with "The Court"?

21               Q     Yes.

22               A     The Court held the ICC abused its



1     discretion in not reducing ComEd's rate base to  
2     account for an additional 18 months of accumulated  
3     depreciation while including test year pro forma  
4     plant additions through that same period, paren, the  
5     same position ComEd has taken in its 2010 electric  
6     distribution rate case discussed below, closed paren.

7                     The Court's ruling, absent reversal  
8     following further proceedings, may trigger a refund  
9     obligation.

10            Q     And would you agree this is Exelon's own  
11     description of the decision from the Second District  
12     Appellate Court?

13            A     It's Exelon's disclosure regarding the  
14     Court's opinion, yes.

15            Q     Okay. Now, could you go to Page 33 and if  
16     you go to the -- three-quarters of the way into the  
17     first full paragraph starting, The Court's  
18     September 30th, 2010 ruling, could you read that into  
19     the record.

20            A     Read that sentence?

21            Q     Yes.

22            A     The Court's September 30th, 2010 ruling in

1 connection with ComEd's 2007 electric distribution  
2 rate case makes it highly unlikely that the ICC would  
3 decide the accumulated post-test year depreciation  
4 issue in ComEd's favor in the 2010 rate case.

5 Q And the next sentence as well.

6 A ComEd estimates that its requested revenue  
7 requirement increase at 396 million could be reduced  
8 by approximately \$85 million as a result of this  
9 adjustment.

10 Q Are you familiar with the Commission's  
11 recent decision in the most recent Ameren rate cases  
12 Docket Nos. 09-0306 through 09-0311?

13 A Generally, although I have not reviewed  
14 them in quite some time.

15 Q Are you familiar with the Commission's  
16 ruling on the proper treatment of accumulated  
17 depreciation and add it in that order?

18 A As I said, it's been a while since I have  
19 reviewed it.

20 Q Are you generally aware that the  
21 Commission's decision in that case on the proper  
22 treatment of accumulated depreciation on existing

1 plant and accumulated deferred income taxes was  
2 essentially the same as that of the Appellate Court  
3 in its review of the ICC's order in 07-0566?

4 MR. THOMAS: I object. The witness just said  
5 she wasn't familiar with it -- the specifics of that  
6 case. You've now asked her a question about the  
7 specifics of that decision.

8 JUDGE SAINSOT: Sustained.

9 BY MS. DALE:

10 Q Is it your position, Miss Houtsma, that  
11 even though the Company has, itself, alerted its  
12 shareholders to the likelihood that the Commission  
13 would rule against Commonwealth Edison on the  
14 accumulated depreciation and add-it issue possibly  
15 triggering refunds and a lower rate increase, that  
16 the ICC should rely on the treatment of depreciation  
17 and accumulated deferred income taxes advocated by  
18 Commonwealth Edison?

19 A Yes. As I stated in my testimony, ComEd is  
20 intending to appeal that -- that decision.

21 Q Okay.

22 A And I believe the ICC -- I understand the

1     ICC has as well.

2           Q     It's your understanding that the ICC has  
3     appealed its ruling from --

4           A     The Supreme Court re- -- or the Appellate  
5     Court ruling.

6           Q     Are you aware, in fact, that the Illinois  
7     Commerce Commission, although they have filed a  
8     petition for leave to appeal with the Supreme Court,  
9     has elected not to ask the Supreme Court to review  
10    the Second District Appellate Court's decision on  
11    accumulated depreciation and accumulated deferred  
12    income taxes?

13          A     No, I'm not aware of that.

14          Q     Would you accept, subject to check, that,  
15    in fact, that is the case, that they have not -- they  
16    have elected not to appeal that decision in their  
17    petition for leave to appeal?

18          MR. THOMAS:   It should be a matter of public  
19    record.   We don't have a problem with taking notice  
20    of it if it's in the public record.

21    BY MS. DALE:

22          Q     Could you turn to Page 11 of your

1 surrebuttal testimony and that is Exhibit --

2 ComEd Exhibit 55.0, Page 11.

3 MR. THOMAS: Just for the record, that's his  
4 second revised --

5 MS. DALE: Second corrected version, yes. I'm  
6 pretty sure this is the same.

7 BY MS. DALE:

8 Q And Lines 224 through 223 you suggest that  
9 ComEd's net plant -- you disagree with Miss Ebrey  
10 that ComEd's net plant will be declining between 2009  
11 and 2011; is that correct?

12 A Correct.

13 Q Okay. And you refer there to ComEd  
14 Exhibit 6.3, which is a -- an exhibit that's already  
15 been admitted into evidence, as part of your direct  
16 testimony; is that correct?

17 A Correct.

18 Q Now, you state on Page 11 that the  
19 pro forma test year net balance on ComEd Exhibit 6.3  
20 with the Company's adjustments is \$9.474 billion; is  
21 that correct?

22 MR. THOMAS: Excuse me. It says million. I

1 believe you said billion.

2 MS. DALE: I'm sorry. Million.

3 BY MS. DALE:

4 A It's 9, comma --

5 MR. THOMAS: I'm just saying in the -- as

6 stated in the testimony, it -- it will be billion,

7 but it's -- stated in the testimony 9,474 million.

8 MS. DALE: Million, that's correct. Which is,

9 in fact, \$9.4 billion?

10 MR. THOMAS: Correct.

11 BY MS. DALE:

12 Q Is that correct, Miss Houtsma?

13 A Correct.

14 Q Okay. And you also state that the same

15 exhibit, 6.3, shows that the Company's forecasted

16 2011 future test year net plant balance is 9.034

17 billion or as your testimony states, 9,034 million;

18 is that correct?

19 A Correct.

20 Q Would you agree that the pro forma net

21 balance being proposed by the Company in this case is

22 \$440 million greater than the Company's own forecast

1 of its 2011 future test year net plant balance  
2 according to ComEd Exhibit 6.3?

3 A What was the figure that you stated?

4 Q Would you agree that the pro forma net  
5 balance being proposed by the Company is \$440 million  
6 greater than the Company's own forecast of its 2011  
7 future test year net plant balance? In other words,  
8 the difference between --

9 A Yes.

10 Q -- 9.474 and 9.034?

11 A Yes.

12 Q And would you also agree that your 2011  
13 future test year net plant balance, as shown on ComEd  
14 Exhibit 6.3, Page 2, does not take into account any  
15 growth on the balance of accumulated deferred income  
16 taxes between 2009 historical test year and 2011  
17 future test year?

18 A It doesn't take into account any change in  
19 accumulated deferred taxes, which can be either a  
20 decrease or an increase. In this case, the schedule  
21 shows that they're relatively equal.

22 Q And would you agree that if, in fact, there

1     were an increase in accumulated deferred income taxes  
2     between 2009 and 2011, that that would be a further  
3     offset to the growth of plant in service?

4             MR. THOMAS:   Just for the record, which plant  
5     in service number are you talking about that it's an  
6     offset to?

7             MS. DALE:    I'm talking about the offset to  
8     gross plant.

9             MR. THOMAS:   In which year?

10            MS. DALE:    In 2011.   That if there had been an  
11     increase from 2009 to 2011, that that would further  
12     offset the growth of plant in service that took place  
13     between 2009 and 2001:

14            MR. THOMAS:   Janice, I'm sorry, I don't mean to  
15     be difficult, but it sounds like you're asking a  
16     hypothetical.   If there were an increase in ADIT, are  
17     you talking about, you know, as a result of the  
18     Commission's action in this case or are you asking  
19     about a hypothetical situation?

20            MS. DALE:    I'm asking hypothetically.

21            THE WITNESS:   Well, I guess referring to  
22     Exhibit 6.3, if your question is if the number shown



1 on Line 10 under the 2011 Future Test Year column or  
2 higher were a larger negative number and one were to  
3 net the amounts on Lines 9 and on 10, then, yes, the  
4 difference would be greater.

5 BY MS. DALE:

6 Q Is it your testimony that the Company's  
7 accumulated deferred income taxes have not increased  
8 between 2009 and 2011?

9 A Yes, Exhibit 6.3, in that analysis,  
10 indicated that the balances were relatively equal or,  
11 in fact, equal.

12 Q So it's your position there was no change  
13 in that amount between those two years?

14 A Correct.

15 Q Now, could you refer to your surrebuttal  
16 testimony, ComEd Exhibit 55.0, second revised version  
17 at Page 19, please.

18 A Okay.

19 Q On that page, Lines 390 to 391 you state  
20 that Mr. Effron has claimed that Commonwealth Edison  
21 should have been contributing larger amounts of --  
22 towards its pension responsibilities in prior years.

1     Could you point to me in Mr. Effron's testimony where  
2     he has made such a claim?

3           A     Do you have a co- -- I don't have a full  
4     set in front of me of his direct and rebuttal  
5     testimony.

6           Q     I have notes that I can lend you.

7           MR. THOMAS:   Which piece of testimony did you  
8     show the witness?

9           MS. DALE:   For the record, I showed the witness  
10    Mr. Effron's direct and rebuttal testimony.  I  
11    believe it's -- his direct is AG/CUB Exhibit 2.0 and  
12    his rebuttal testimony is AG/CUB Exhibit 8.0.

13          THE WITNESS:   In the section of his testimony  
14    that I was referring to there was -- is on Page 15 of  
15    2.0.  The question and answer that begins on Line 327  
16    through 338 and I guess specifically where he says,  
17    In effect, that higher pension contribution in 2009  
18    made up for the shortfall in earlier years.  If the  
19    pension contributions in the earlier years had been  
20    equal to the pension accruals in those years, that a  
21    catch-up in -- then the catch-up contribution in 2009  
22    would not have been necessary, therefore, the pension

1 contribution in 2009 should not be included in rate  
2 base.

3 BY MS. DALE:

4 Q Okay. But does Mr. Effron state anything  
5 there as to what he believes Commonwealth Edison  
6 should have contributed in those years? Does he --  
7 does he -- strike that.

8 Does Mr. Effron at all challenge the  
9 Company's discretion to make whatever contributions  
10 they deem appropriate in any given year?

11 A I don't believe that he claims we did not  
12 have discretion.

13 Q Wouldn't you agree that his testimony is a  
14 description merely of what would have happened if the  
15 Company had contributed amounts equal to the pension  
16 accruals in those years?

17 A It's a description of what would have  
18 happened and then also a conclusion that what did  
19 happen should be disallowed, so I took it to be more  
20 than just a hypothetical, more of a disagreement with  
21 our position.

22 Q And do you find any similar claim in

1 Mr. Effron's rebuttal testimony which is ComEd -- I'm  
2 sorry -- AG/CUB Exhibit 8.0?

3 A When you say "similar claim" --

4 Q A claim that Commonwealth Edison should  
5 have been contributing larger amounts in the years  
6 prior to 2009.

7 A On Page 9 of Exhibit 8 beginning on  
8 Line 184 he states, as I said in my direct testimony,  
9 If the pension contribution in the earlier years had  
10 been equal to the pension accruals in those years,  
11 then the catch-up contribution in 2009 would not have  
12 been necessary.

13 Q So, basically, he's simply describing the  
14 consequence of what happened because the Company  
15 decided to make the particular contributions that it  
16 made during years 2006 through 2009?

17 MR. THOMAS: I'm going to object. Counsel is  
18 now arguing with the witness. The witness stated in  
19 her testimony what she believed Mr. Effron's position  
20 was, she's now identifying the particular phrases in  
21 Mr. Effron's testimony that she was relying on. In  
22 effect, now Counsel is arguing with the witness for

1 her interpretation.

2 MS. DALE: I withdraw that question.

3 BY MS. DALE:

4 Q Now, could you go back to your surrebuttal  
5 testimony, Commonwealth Edison Exhibit 55.0, second  
6 revised addition to Line 406.

7 A Okay.

8 MS. DALE: And, for the record, that's on  
9 Page 19 of ComEd Exhibit 55.0.

10 BY MS. DALE:

11 Q And on Line 406 you refer to Commonwealth  
12 Edison Exhibit 55.5, which is an attachment to your  
13 surrebuttal testimony, could you please go to that  
14 exhibit.

15 A Okay.

16 Q Okay. Now, referring to ComEd  
17 Exhibit 55.5, would you refer to Line 6 that lists  
18 the total jurisdictional pension contributions for  
19 years 2006, 2007 and 2008.

20 A Would you like me to read that?

21 Q Yes, if you could, please.

22 A In 2006, the total jurisdictional pension

1 contribution was 2.545 million; 2007, it was 2.519;  
2 2008, it's 8.280; and in 2009, 145.046.

3 Q Okay. I just want to focus on 2006 through  
4 2008 at this point. And further to the right on that  
5 exhibit, there's a column that says, Total, 2006 to  
6 2008. And would you agree that the total for those  
7 years -- the total jurisdictional pension  
8 contributions of those first three years that you  
9 read come to \$13.343 million?

10 A Yes.

11 Q Is that correct?

12 A Yes.

13 Q Now, could you go to Line 2 on this same  
14 document and read the jurisdictional net periodic  
15 benefit cost to the Company for years 2006, 2007 and  
16 2008.

17 A In 2006, the jurisdictional periodic  
18 benefit cost was 23.960; 2007, it was 36.67; in 2008,  
19 it's 33.354.

20 Q And would you agree that the total of those  
21 numbers as shown in the second column from the right  
22 representing the Company's jurisdictional net

1 periodic benefit cost is \$93.984 million?

2 A Yes.

3 Q Okay. Would you agree that for the years  
4 2006 through 2008 combined, the Company's  
5 jurisdictional contributions were \$80.6 million less  
6 than the Company's jurisdictional pension expense  
7 accruals, that would be the total from Line 6 minus  
8 the total from Line 2 that we just referred to?

9 A Yes, that sounds right.

10 Q Okay. Now, in 2009, according to this  
11 schedule, the Company's jurisdictional contribution  
12 was \$92 million greater than it's jurisdictional  
13 pension expense accrual, would you agree?

14 A Can you repeat that, please.

15 Q Okay. Let me refer you to the lines. On  
16 Line 6 -- Line 6 indicates that the Company's total  
17 jurisdictional pension contributions for 2009 were  
18 \$145.046 million and it's jurisdictional net periodic  
19 benefit costs were \$91,410 million; is that correct?

20 A Yes.

21 Q Okay. So even though the Company's  
22 contribution for its 2009 expense was much larger

1     than its expense accrual, the contribution for the  
2     four years, from 2006 through 2009, was only  
3     minimally larger than its four-year expense accrual  
4     due to the fact that the first three years of the  
5     Company's contributions were so much less than the  
6     accruals; isn't that correct?

7             MR. THOMAS: I object to the use of the word  
8     "minimally." If you want to give the numbers, that's  
9     fine.

10    BY MS. DALE:

11            Q     So the difference between the Company's  
12     jurisdictional contribution in 2009 and its  
13     jurisdictional pension expense accrual was  
14     approximately \$43 million, 636 dollars, is that  
15     correct, the difference between 145 million,  
16     46 thousand and 53 million, 8 thousand -- I'm sorry.  
17     I'm sorry. I read the wrong number.

18                     In 2009, the jurisdictional  
19     contribution of the Company was the difference  
20     between 145 million, 46 thousand, as it appears on  
21     Line 6 and 91 million, 410 thousand as it appears on  
22     Line 2; is that correct?



1           A     Well, the 91.41 million on Line 2 is not  
2     the annual expense amount. It includes the amounts  
3     that are capitalized, so the difference between the  
4     amount of the contribution would be the amount -- the  
5     difference between the amount on Line 6 and the  
6     amount on Line 4.

7           Q     Okay. And --

8           A     It's 53.008 million.

9           Q     Okay. And would you agree that that -- the  
10    difference between those two amounts, the Company's  
11    jurisdictional contribution in 2009 and its  
12    jurisdictional pension expense accrual was, in fact,  
13    approximately \$92 million?

14          A     That amount sounds right.

15          Q     Okay. So for the years 2006 through 2009  
16    combined, the four-year period that we're talking  
17    about now, the jurisdictional contributions that the  
18    Company made were only \$11.4 million greater than the  
19    jurisdictional pension expense accruals it  
20    experienced; is that correct?

21          A     That would be the total of --

22          Q     Let me try to clarify this. I'll refer you

1 back to the earlier questions I asked where we --  
2 where you agreed with me that the difference between  
3 the Company's contributions and its accruals was  
4 approximately \$80.6 million. In other words, the  
5 Company's accruals exceeded its actual contributions  
6 during that three-year period by \$80 million.

7                               You agreed that was when we read --

8               A     For the period 2006 through 2008.

9               Q     2008, okay.

10              A     Correct.

11              Q     And in 2009, you agreed that the  
12 jurisdictional contribution was now, in fact, greater  
13 than the Company's jurisdictional pension expense  
14 accrual, this time by \$92 million?

15              A     Well, the \$80 million -- I guess just to be  
16 clear -- is the difference between Line 2, which is  
17 not the expense, so if -- it would be -- the  
18 difference between the contribution and the expense  
19 for the period 2006 through 2008 is the difference  
20 between the 70 -- I'm sorry -- the 64 million on Line  
21 4 and the 13 million on Line 6?

22                               The 80 million is the difference

1     between the total cost in the contribution, not just  
2     the expense?

3             Q     Could you explain the difference between --

4             MS. DALE:   Would you read that answer back.

5     I'm sorry.

6                     (Record read as requested.)

7     BY MS. DALE:

8             Q     Okay.   Okay.   Now, could you refer to your  
9     rebuttal testimony, Commonwealth Edison Exhibit 29.0  
10    at Page 47.

11            A     Okay.

12            Q     On Lines 1006 through 1007, you state that  
13    the Company's costs associated with its Exelon Way  
14    Severance Program have previously been found to be  
15    reasonable and appropriately recovered through 2014;  
16    is that correct?

17            A     Correct.

18            MS. DALE:   May I approach the witness?

19            JUDGE SAINSOT:   Yes, you may.

20            MS. DALE:   Now, handing you a document which  
21    I'm handing the Judge to mark as AG Cross Exhibit 24.

22                     Now, for the record, this is

1 Commonwealth Edison's response to AG Data Request  
2 No. 13.14.

3 (Whereupon, AG Cross  
4 Exhibit No. 24 was  
5 marked for identification  
6 as of this date.)

7 BY MS. DALE:

8 Q Do you recognize this, Miss Houtsma?

9 A Yes.

10 Q Okay. Did you -- are you sponsoring this  
11 particular response?

12 A Yes.

13 Q Okay. And this request asks the Company to  
14 provide specific citation to where it was found to be  
15 reasonable that the referenced costs, that is, the  
16 Exelon Way Program severance costs should be  
17 recovered through 2014; is that correct?

18 A Correct.

19 Q Can you show me where in this answer the  
20 Company explains when the start date or end date for  
21 the amortization of these severance costs should  
22 occur.

1           A     What the response indicates is that in that  
2     order -- in the Commission's order in 05-0597, there  
3     was a finding that that se- -- we had requested  
4     recovery of the full \$158 million in Exelon Way  
5     Severance Costs and our proposed severance expenses  
6     were found to be just and reasonable and approved  
7     full recovery those costs. The order did not  
8     explicitly address dates one way or another.

9           Q     It didn't address the dates from when the  
10    amortization of these costs should occur; is that  
11    correct?

12          A     No, but the order did not come out until  
13    late 2006.

14          Q     When were the Exelon way severance costs  
15    first incurred?

16          A     I believe it was 2004.

17          Q     And would you agree with me that the  
18    Company itself charged \$21.5 million of Exelon way  
19    severance costs to expense in 2004?

20          A     Do you have a reference?

21          Q     Yes. I have an excerpt from the  
22    Commission's order in Docket No. 05-0597.

1 MS. DALE: I'm not entering this into the  
2 record.

3 THE WITNESS: That's correct, I agree.

4 BY MS. DALE:

5 Q And it states there on Page 87 -- the order  
6 states that Commonwealth -- in the first paragraph,  
7 approximately the middle of the paragraph it states,  
8 ComEd states that it incurred approximately  
9 \$158 million in severance costs in 2003, in 2004 and,  
10 further, ComEd avers that test year expenses in this  
11 proceeding include \$21 million of the total severance  
12 costs related to the Exelon Way Savings Program; is  
13 that correct?

14 A That's correct. So just to clarify my  
15 prior answer, the costs were incurred in 2003 and  
16 2004.

17 Q Mm-hmm. And was the test year in this rate  
18 case 2004?

19 A Yes.

20 Q Okay. And, in fact, it was the expense  
21 recorded in the 2004 test year that was included in  
22 the Company's revenue requirement in this case;

1 correct?

2 A Well, the amount that was included in the  
3 revenue requirement was the \$158 million divided by  
4 seven and a half -- seven-and-a-half-year  
5 amortization period, which was \$21 million.

6 Q If the Company had not been recording this  
7 expense in 2004, there would be no expense in the  
8 2004 test year in this rate case and there would be  
9 nothing in the Company's revenue requirement in that  
10 case; isn't that true?

11 A No, I don't agree with that.

12 Q Well, how would the \$21 million appear as  
13 an expense item in the 2004 rate case if the Company  
14 hadn't been recording that expense in 2004?

15 A It -- you know, the Commission rules  
16 allowed for us to request recovery of the costs  
17 associated with the Cost Savings Initiative Program  
18 and the amount that it included doesn't necessarily  
19 have to be the amount included in the test year.

20 Q Is it your testimony that, in fact,  
21 Commonwealth Edison did not incur any expenses  
22 associated with the Exelon Way Program in 2004?

1           A     No, that's not my testimony.

2           Q     When -- well, when did the Company begin to  
3 accrue this expense?

4           A     In 2003 and 2004.

5           Q     So it did accrue in 2004?

6           A     Yes, we did. I'm sorry, I thought you  
7 asked before about a hypothetical.

8           Q     I'm just trying to establish what happened  
9 in 2004 that led them to make this request for  
10 recovery going forward and I just wanted to establish  
11 that, in fact, they did record \$21 million worth of  
12 expense in the 2004 test year for Exelon way  
13 severance costs; is that correct?

14          A     That's correct.

15          Q     Okay. Now, if that expense is to be  
16 amortized over seven and a half years, then the  
17 amortization would be complete in mid-2011; isn't  
18 that correct?

19          A     If the 21 million were to be amortized over  
20 seven years?

21          Q     No, if the 158 million were to be amortized  
22 over seven and a half years.



1           A     It is being amortized over seven and a half  
2     years, it's being amortized over the period that  
3     we're receiving recovery of it and that recovery  
4     began in 2007, so it's being amortized over a period  
5     that's consistent with the rate recovery.

6           Q     But, in fact, they -- the Company begin  
7     recording the expense in 2004, that's how it showed  
8     up in the test year?

9           A     We began -- we recorded the expense in 2003  
10    and 2004 and then there was -- it was reversed out in  
11    2006 and a regulatory asset was recovered, was  
12    recorded and now that regulatory asset is being  
13    amortized as the rate recovery is occurring. In  
14    2004, there would have been no basis to begin to  
15    amortize it because there was not a basis for rate  
16    recovery at that point.

17          Q     Are you saying that the Company does not  
18    amortize costs unless it is recovering them, unless  
19    recovery has been authorized?

20          A     It doesn't amortize costs as a regulatory  
21    asset unless there is assurance of rate recovery.  
22    And then it's -- then it is amortized over a period

1       that's consistent with the rate recovery.

2               Q       So are you saying that it's the Company's  
3       position that amortization of these costs, for  
4       ratemaking purposes, did not begin until 2007?

5               A       Correct.

6               Q       And the Exelon Way Program, did I hear you  
7       testify before that, in fact, it began in 2003?

8               A       Yes.

9               Q       And there were savings associated with that  
10      program that convinced the Company that it was a  
11      reasonable cost to incur because there would be  
12      savings associated with it?

13                      I believe the Commission's order in  
14      Docket 05-0597 states that there would be savings of  
15      approximately \$70 million in '05; 73 million in '06;  
16      and 75 million in '07; is that correct?

17              A       Are there two questions? One is --

18              Q       Let me ask two questions, I apologize.  
19      That was too much.

20                      Did the Company realize savings from  
21      the Exelon Way Severance Program that exceeded its  
22      costs when the program began -- in the year that the

1     program began?

2             A     No, I don't believe so.

3             Q     Are you familiar with the concept of

4     regulatory lag?

5             A     Yes.

6             Q     Okay. Could you please explain your

7     understanding of what is meant by "regulatory lag"?

8             A     Regulatory lag refers to the delay -- the

9     timing difference between when a regulated company

10    are subject to cost-based rates incurs the cost and

11    then receives rate recovery for those costs.

12            Q     Is it your position that the Company should

13    be allowed to include the amortization of Exelon's

14    way severance costs in rates indefinitely?

15            A     No.

16            Q     Isn't it true that if amortization is

17    complete in mid-2011 but this expense is included in

18    the Company's revenue requirement, then rates

19    beginning in mid-2011 will reflect an expense that

20    the Company is no longer actually recording?

21            A     I don't agree that amortization is complete

22    in 2011.

1           Q     So you're saying that the Company recorded  
2     no expenses associated with this program until 2007  
3     when the Commission put into effect rates subject to  
4     the order in 07-0566?

5           A     Well, as I explained earlier, we recorded  
6     expenses in 2003 and 2004 and then reversed those  
7     expenses out in 2006. So as of the end of 2006, the  
8     other -- those all washed out and then beginning in  
9     2007, we began to amortize them.

10          Q     What do you mean reversed them out in 2006?

11          A     We recorded a charge of 23- -- using the  
12     numbers in the order, we recorded a charge -- a  
13     charge in 2003 and a charge in 2004 that collectively  
14     totaled \$158 million. I don't have the specific  
15     breakdown between the years, but it recorded -- so  
16     there's a net charge as of the end of 2004 of 158  
17     million and then a credit a reversal of those charges  
18     on our books in 2006. So that when you look at the  
19     number, you know, a three- to four-year period, 2003  
20     to 2006, the net amount recorded was zero.

21          Q     Would you agree that pursuant to regulatory  
22     lag, costs that a utility might incur between rate

1 cases, but which are not normally recurring, may not  
2 obtain official Commission approval for recovery  
3 until several years after those costs have originally  
4 occurred?

5 A Can you give me an example of a type of  
6 costs you're referring to?

7 Q Well, I could use --

8 A Like --

9 Q -- these costs. There were costs  
10 associated with this program that started in 2003.  
11 The Company did not file a rate case until 2005.  
12 Those costs were not reflective in rates until 2007;  
13 is that correct?

14 A That's correct.

15 Q And until the concept of regulatory lag,  
16 the utility could incur costs which were not normally  
17 recurring and not obtained official Commission  
18 approval until several years after they started  
19 occurring; is that correct?

20 A In this case, yes, that's correct, we did  
21 not obtain approval for cost recovery until several  
22 years after the costs were incurred.

1           Q     Okay. I want to ask you some questions now  
2     about ComEd's repair allowance. If you could turn to  
3     your rebuttal testimony, Commonwealth Edison  
4     Exhibit 29.0 at Page 38 to 39.

5                     Now, your tes- -- do you have that  
6     there? Sorry.

7           A     Page 28?

8           Q     38 to 39.

9           A     Okay.

10          Q     Your rebuttal testimony there states that  
11     Commonwealth Edison has not yet requested permission  
12     to adopt changes to its tax accounting for repair  
13     costs pursuant to proposed regulations issued by the  
14     IRS in March of 2008; is that correct?

15          A     Correct.

16          MS. DALE: Okay. May I approach the witness,  
17     your Honor?

18          JUDGE DOLAN: Yes.

19          MS. DALE: I'm now handing you a document which  
20     I'm giving to the court reporter and asking to be  
21     marked as AG Cross Exhibit 25.

22          JUDGE SAINSOT: You mean the Judges.

1 BY MS. DALE:

2 Q And this is Commonwealth Edison's --

3 response to AG Data Request 1.43; is that correct?

4 A Correct.

5 Q And I believe that --

6 MR. THOMAS: Excuse me. Just for the record,

7 because there may be some confusion, this document is

8 already in evidence as ComEd Cross Exhibit 19.

9 MS. DALE: You beat me to it, that was what I

10 was just going to mention.

11 MR. THOMAS: Otherwise we're going to have

12 references to the same document.

13 MS. DALE: Right. Right. Then we can just

14 refer to the whole response as ComEd Cross

15 Exhibit 19.

16 MR. THOMAS: Correct.

17 MS. DALE: And we shouldn't mark it then as

18 AG Cross Exhibit 25.

19 JUDGE SAINSOT: And, for the record, you are

20 not going to seek to have it admitted into evidence

21 anyway, right, it's already in evidence?

22 MS. DALE: Pardon me? It is in evidence, yes.

1 MR. THOMAS: It is in evidence.

2 BY MS. DALE:

3 Q Now, the regulations that are the subject  
4 of this data request have to do with repair allowance  
5 deductions for both electric transmission and  
6 distribution companies; is that correct?

7 I'll give you a chance to look at the  
8 letter.

9 A Well, it has to do with the tax  
10 deductibility of tax repair costs. I'm not sure for  
11 repair allowances.

12 Q And you state in your testimony that  
13 because the Internal Revenue Service has not issued  
14 guidelines with respect to this particular  
15 regulation, ComEd is collaborating with the Edison  
16 Electric Institute and other utilities to obtain  
17 specific implementation guidance from the IRS in  
18 order to request this change; is that correct?

19 A Yes.

20 Q Is one of the utilities ComEd is  
21 collaborating with Exelon?

22 MR. THOMAS: Exelon is not a utility, just for



1 the record.

2 THE WITNESS: No.

3 BY MS. DALE:

4 Q Would this regulation apply to Exelon as a  
5 transmission company?

6 A I'm not sure.

7 MR. RIPPIE: Sorry. Speaking out of turn, but  
8 what do you mean by Exelon as a transmission company?  
9 Do you mean -- Exelon is a transmission company? Do  
10 you mean etc., sub or do you mean -- the transmission  
11 assets owned by Exelon subsidiaries are owned by  
12 ComEd and people, they're not owned by Exelon? I'm  
13 not trying to object. I just want the record to be  
14 not a mess.

15 BY MS. DALE:

16 Q Could you refer back to AG Cross Exhibit  
17 23, the first exhibit that I handed you which is  
18 excerpts from Exelon's 10Q.

19 A I have it.

20 Q Okay. And could you go to the last page of  
21 that cross-examination exhibit.

22 A Observing.

1           Q     In the last paragraph on that page, could  
2     you read the first two sentences of the last  
3     paragraph on that page.

4           A     In 2009, Exelon received approval from the  
5     IRS to change its method of accounting for repair  
6     costs associated with generation power plants. The  
7     new tax method of accounting resulted in net positive  
8     cash flow for the nine months ended September 30th,  
9     2010, of approximately \$126 million and approximately  
10    420 million for the -- for the year ending December  
11    31st, 2009.

12          Q     Is this change in method of accounting for  
13    repair costs that you just described -- or read from  
14    this excerpt from the 10Q, is that the same tax  
15    change that was the subject of ComEd's response to  
16    AG 1.43 -- I'm sorry -- is it the same -- is the  
17    subject matter the same as that of Commonwealth  
18    Edison Exhibit 19- -- Cross Exhibit 19.0 -- in other  
19    words, are we talking about the same tax change?

20          A     The -- they both have to do with the  
21    deductibility of tax repairs, although I believe the  
22    definition of "unit of property" is very different

1     for a transmission and distribution utility than it  
2     is for a generation utility.  So as I understand it,  
3     the EEI efforts and the uncertainty is around the --  
4     has more to do with the transmission and distribution  
5     property and that's the subject of 1.43.

6           Q     Referring back to AG Cross Exhibit No. 23,  
7     Page 82, does that account of Exelon's receiving this  
8     approval from the IRS indicate that there are still  
9     uncertainties associated with the application of this  
10    particular change in regulations?

11          A     With respect to transmission and  
12    distribution companies?

13          Q     Yes.

14          A     This disclosure has to do with the  
15    generation company and does not address the  
16    transmission and distribution companies.

17          Q     Okay.  With respect to the generation  
18    company, does this account -- this disclosure then  
19    state that in the second quarter of 2010, Exelon was  
20    formed that the IRS had suspended its pre-filing  
21    agreement process and, instead, intends to issue  
22    broad industry guidance with respect to electric

1 generation power plants.

2 If that broader guidance is issued,  
3 it's recently possible that the total amount of  
4 unrecognized tax benefits could increase or decrease  
5 within the next 12 months?

6 MR. THOMAS: I'm going to object on the grounds  
7 of relevance. The witness has already said that this  
8 language here and the guidelines and so forth that we  
9 talked about apply to generation, this is not a  
10 generation case. She's already distinguished this  
11 from what's being addressed here in her testimony and  
12 what's in -- is it AG Exhibit -- ComEd Exhibit Cross  
13 19 and so I think this is irrelevant and we should  
14 move on.

15 JUDGE SAINSOT: Miss Dale?

16 MS. DALE: I'm exploring the consequences of  
17 the Company's decision to not take advantage of this  
18 change in IRS regulations as compared with that of  
19 one of it's affiliates who did take advantage of this  
20 regulatory change and what the consequences were for  
21 having done so.

22 MR. THOMAS: The witness has already testified

1     that its different regulations, so we're talking  
2     about apples and oranges here.

3             MS. DALE:  It may apply to a distribution  
4     company on the one hand and a generation company on  
5     the other hand, but I believe it's the same tax  
6     change.

7             JUDGE SAINSOT:  Sustained.  The witness already  
8     indicated that it's -- that there's different issues  
9     involved with generation and transmission --  
10    distribution, excuse me.

11    BY MS. DALE:

12            Q     According to your testimony, you have  
13    stated that Commonwealth Edison did not apply for  
14    this particular tax modification because it said that  
15    there were uncertainties associated with this  
16    modification that hadn't been resolved yet; is that  
17    correct?

18            A     Yes.  I stated there's considerable  
19    uncertainty as to specifically how a unit of property  
20    should be defined for transmission and distribution  
21    property.

22            Q     But would you agree, based on the

1 information that's contained in Exelon's 10Q, that  
2 Exelon did take advantage of this tax accounting  
3 change even though it was for a different sort of  
4 utility?

5 MR. THOMAS: I object. I think that you can't  
6 make a comparison between apples and oranges and ask  
7 if that somehow shows something.

8 JUDGE SAINSOT: Yeah, we don't really know the  
9 nature of the tax code provision involved. I mean,  
10 it could be -- there could be a big group and then  
11 subsets with different things or it could be just one  
12 specific thing. It's hard to compare Exelon with  
13 ComEd without having that information, so the  
14 objection is sustained.

15 MS. DALE: Your Honor, I'm simply trying to  
16 explore why it is that looming uncertainties on how  
17 the IRS is eventually going to apply a particular  
18 regulation would not stop one of Commonwealth  
19 Edison's affiliates from going ahead and applying  
20 that tax change to the benefit of shareholders but  
21 that when it would be accruing -- what that benefit  
22 would accrue for -- the same benefit would accrue for

1 Commonwealth Edison's ratepayers, Commonwealth Edison  
2 cites uncertainties.

3 JUDGE DOLAN: Well, Counsel, if you look at the  
4 very first sentence of what you're pointing to it  
5 says, Exelon received approval from the IRS for the  
6 costs -- repair costs associated with a generation  
7 power plant. Now she's indicated that they haven't  
8 received the same response for their distribution.

9 MS. DALE: Well, further on, your Honor, in  
10 that same paragraph it says, Although the IRS granted  
11 Exelon approval to change its method of accounting,  
12 the approval did not affirm the methodology used to  
13 calculate the deduction. So the methodology  
14 apparently is still a matter of controversy, yet  
15 Exelon went ahead and applied for this and its  
16 shareholders are benefitting, I believe, to the tune  
17 of \$420 million for 2009 and \$126 million for the  
18 first nine months of 2010 and --

19 JUDGE DOLAN: Why don't you see if she can  
20 explore -- or she can explain the differences and  
21 maybe that will help you to get where you are going.

22 MS. DALE: I'm simply trying to explore what

1 the consequences are for Commonwealth Edison not  
2 having pursued this --

3 JUDGE SAINSOT: Wait. I think Judge Dolan just  
4 allowed you to proceed, so go ahead.

5 MS. DALE: Okay.

6 BY MS. DALE:

7 Q Would you agree that Exelon characterized  
8 its decision to adopt this change as a benefit to its  
9 shareholders in spite of the regulatory uncertainties  
10 associated with this tax change that are still  
11 unresolved?

12 MR. THOMAS: I object. I don't think that's an  
13 accurate characterization of the language in the  
14 document.

15 JUDGE SAINSOT: Would you repeat the question,  
16 Miss Dale. I was busy coughing.

17 MS. DALE: Sure.

18 BY MS. DALE:

19 Q Would you agree that Exelon has  
20 characterized its decision to adopt this tax change  
21 as a benefit to its shareholders in spite of the  
22 regulatory uncertainties that are still unresolved



1     concerning the IRS's failure to approve the  
2     methodology to calculate the deduction that is  
3     referred to in this note?

4             MR. THOMAS:   Same objection.   I don't see that  
5     language anywhere on the document here that we're --  
6     we've been focusing on.

7             MS. DALE:    It's on Page 82.

8             MR. THOMAS:   Not as you've just characterized  
9     it.

10            MS. DALE:    Well, I'm asking her, would you --

11    BY MS. DALE:

12            Q     Would you agree that Exelon characterized  
13     this decision as a good one for shareholders?

14            MR. THOMAS:   I'm going to raise another  
15     objection, which is that this witness is not here as  
16     a generation witness.   We're talking about generation  
17     issues and tax issues for generation.   It just seems  
18     to me it's completely afield of the purpose of this  
19     proceeding.

20            MS. DALE:    Okay.

21            JUDGE SAINSOT:   Miss Dale --

22            MS. DALE:    I'll withdraw the question.

1 JUDGE SAINSOT: Okay.

2 BY MS. DALE:

3 Q I think I have just one more topic.

4 Now, Miss Houtsma, in your surrebuttal

5 testimony on Page 6, that's Commonwealth Edison

6 Second Revised Exhibit 55.0, you refer to some bonus

7 tax depreciation laws that just went into effect; is

8 that correct?

9 A Correct.

10 Q Okay.

11 And would you agree, subject to check,

12 that Commonwealth Edison Witness Donnelly has

13 testified that Commonwealth Edison continuously and

14 methodically invests around \$150 million each quarter

15 in plant additions?

16 MR. DALE: This appeared, for the record, in

17 Commonwealth Edison Exhibit 58.0, Page 69.

18 THE WITNESS: I'll accept that, subject to

19 check.

20 MS. DALE: Okay. May I approach the witness?

21 JUDGE DOLAN: Yes.

22 BY MS. DALE:

1           Q     I'm now handing you a document that is --  
2     Commonwealth Edison's response to AG Data Request  
3     13.12 which this one will now be AG Cross Exhibit 25.  
4                     (Whereupon, AG Cross  
5                     Exhibit No. 25 was  
6                     marked for identification  
7                     as of this date.)  
8           MR. THOMAS:   We're trying to get the citation  
9     for the testimony.  
10          MS. DALE:    Oh, I'm sorry.  
11          MR. RIPPIE:   I probably misheard it.  
12          MR. THOMAS:   I heard Exhibit 58, but it was  
13     what followed that that was garbled.  
14          MS. DALE:    It was Commonwealth Edison's Exhibit  
15     58.0, Page 69.  
16          MR. RIPPIE:   69.  
17          MS. DALE:    69, sorry.  
18          MR. RIPPIE:   Thank you.  
19     BY MS. DALE:  
20          Q     Now, Miss Houtsma, do you recognize the  
21     response to this data request?  
22          A     Yes.

1           Q     Okay.  And could you turn to the first  
2     attachment and this is the schedule labeled January  
3     2010 through October 2010 Actual Jurisdiction of  
4     Plant Additions Placed in Service by Month and would  
5     you agree that this -- the overall total plant  
6     additions listed on this document are \$501,568,000  
7     for the first ten months of 2010?

8           A     Yes.

9           Q     And would this amount be consistent -- the  
10    average amount, then, of plant additions made by the  
11    Company during this time would be approximately  
12    \$50 million, would you agree?

13          A     You're taking the 501 million divided by  
14    10?

15          Q     Yes.

16          MR. THOMAS:  I'm sorry, could you repeat that.

17    BY MS. DALE:

18          Q     Would you agree that the average  
19    jurisdictional plant additions described on this  
20    schedule for the first ten months of 2010 would be  
21    approximately \$50 million per month?

22          MR. THOMAS:  Are -- you're talking about in

1 service; correct?

2 MS. DALE: Well, I'm just talking about it as  
3 Commonwealth Edison listed here.

4 MR. THOMAS: Well, I just want to make it clear  
5 the title talks about placed in service by month, so  
6 we're not just talking about plant cap adds or  
7 something of that nature.

8 THE WITNESS: I agree that would be the  
9 ten-month -- monthly average over that ten-month  
10 period.

11 (Change of reporters.)

12 MS. DALE: May I approach the witness again?

13 JUDGE DOLAN: (Shaking head up and down.)

14 MS. DALE: I'm handing you a document that I'm  
15 going to ask the judge to label AG Cross-Exhibit 26.

16 (Whereupon, AG Cross-Exhibit  
17 No. 26 was marked for  
18 identification.)

19 MS. DALE: And this exhibit is Commonwealth  
20 Edison response to AG Data Request --

21 JUDGE SAINOT: No. 26?

22 MS. DALE: Yes.

1                   Do you recognize this response,  
2   Ms. Houtsma?

3           THE WITNESS: Yes, although, I don't recall  
4   offhand -- it's asking for an update to TEE to a  
5   Staff Data Request, and I don't recall offhand what  
6   that request is specifically asking for.

7   BY MS. DALE:

8           Q     Well, I'm primarily concerned with the  
9   numbers.

10          A     I understand, but I can't tell just from  
11   looking at this what period the numbers covered.

12          Q     Would you agree, subject to check, that the  
13   number listed across from the line entitled, Increase  
14   in Total Jurisdictional Accumulated Depreciation  
15   Reserve of \$627 million represents the 18-month  
16   period from January 1, 2009 through June 30, 2011?

17          A     Do you have the attachment to this?

18          Q     No, I'm afraid I don't.

19          A     I will accept that, subject to check.

20          MR. RATNASWAMY: Do you have 2010?

21          THE WITNESS: I'm sorry.

22          MR. THOMAS: You said January 1, 2009 to

1 June 2011, I believe.

2 MS. DALE: I'm sorry. January 1, 2010 through  
3 June 30, 2011, 18 months.

4 BY MS. DALE:

5 Q And would you agree, subject to what we  
6 just mentioned that we need to check, that this  
7 increase in total jurisdictional accumulated  
8 depreciation reserve is \$627 million, according to  
9 this response?

10 A Yes, that's what it says.

11 Q And would you agree that that averages out  
12 to approximately \$35 million per month over an  
13 18-month period, specifically 627 divided by 18?

14 A I used to be able to do that in my head. If  
15 627 divided by 18 is --

16 Q 34.83?

17 A -- then I would agree.

18 Q You would agree with that, subject to  
19 check?

20 A Yes.

21 Q Okay. Now, subject to this new bonus tax  
22 depreciation law, is it not true that the Company can

1     presently deduct 100 percent of capital expenditures  
2     for income tax purposes under that new law?

3             A     Can you repeat the question.

4             Q     Would you agree that under the tax relief  
5     unemployment insurance reauthorization and Job Create  
6     Act of 2010 that you refer to on Page 6 of your  
7     surrebuttal testimony, would you agree that under the  
8     provisions of that law, the Company can presently  
9     deduct 100 percent of capital expenditures for income  
10    tax purposes, pursuant to that law, I think  
11    retroactive to January 1, 2011, I believe?

12            A     The bonus depreciation, the 100 percent  
13    deduction applies to capital additions, not capital  
14    expenditures.

15            Q     Okay.

16            A     Subject to that verification, yes, the 2011  
17    capital additions.

18            Q     Okay. Capital additions. You're correct.

19                   And with capital additions of  
20    approximately \$50 million a month, and depreciation  
21    running at about \$35 million a month and the effects  
22    of the bonus tax depreciation of roughly, let's say,



1     \$20 million, wouldn't you agree that the Company's  
2     plan additions are, in fact, offset by depreciation  
3     and deferred taxes on a regular basis over the  
4     18 months, from January 1, 2010 to June 30, 2011?

5             MR. THOMAS: I'm going to object that it's not  
6     clear that -- we don't have, again, an apple to  
7     oranges problem, but we've got one document that's  
8     talking about additions placed in service by month.

9                     And then we have, you know, another  
10    document which we don't even have the context for,  
11    but we're accepting, subject to check, has to do with  
12    accumulated depreciation reserve, and it's just -- I  
13    don't know that we are talking -- and then the tax  
14    that applies on capital additions. So, the question  
15    is whether all three of those match up, I'm not  
16    entirely sure. That's the problem with having a  
17    document like this without being able to check the  
18    content.

19             MS. DALE: Well, I would ask the witness to  
20    answer the question.

21             JUDGE SAINSBOT: Why don't you rephrase and make  
22    it clear as to what you're asking.

1           MS. DALE: Assuming that the Company is making  
2 capital additions of approximately \$50 million per  
3 month --

4           MR. THOMAS: Where is that?

5           MS. DALE: I believe that is what Mr. Donnelly  
6 testified to.

7           MR. RIPPIE: No, he talked about cap-ex, not  
8 cap-adds.

9           BY MS. DALE:

10           Q Well, would you agree that the 100 percent  
11 deductions under the new tax law would offset the  
12 Company's capital expenditures of \$50 million a  
13 month?

14           MR. THOMAS: Excuse me. The witness has already  
15 testified that that law applies to capital additions,  
16 not capital expenses. You're now asking her whether  
17 it offsets the capital expenses. I don't understand.

18           MS. DALE: Okay. I'll withdraw the question.

19           JUDGE SAINSOT: Ms. Dale, are you about  
20 through?

21           MS. DALE: Yes, that was my last line of  
22 questioning.

1 Thank you, Ms. Houtsma.

2 I would move for admission into  
3 evidence AG Cross-Exhibits 23, 24, 25 and 26.

4 MR. THOMAS: No objection to all, except 26,  
5 since we are not quite sure what the question is that  
6 was being updated. We would like to at least take a  
7 look at that.

8 JUDGE SAINSOT: What is 26?

9 MR. THOMAS: 26 was the very last one. It was  
10 an update to Staff Data Request TEE 2.01.

11 The witness testified that she wasn't  
12 sure exactly what that was. So, we need to have that  
13 in order to determine whether we should object or  
14 not.

15 JUDGE DOLAN: So we will reserve ruling on 26,  
16 but 23, 24 and 25, no objection?

17 MR. THOMAS: Right.

18 JUDGE SAINSOT: That being the case, your  
19 motion is granted, Ms. Dale, and AG Cross-Exhibits  
20 23, 24 and 25 are entered into evidence.

21 And with that, I think we ought to  
22 break for lunch.

1                   We will be back at 1:30.

2                   (Whereupon, AG Cross-Exhibit

3                   Nos. 23, 23, and 25 were

4                   admitted into evidence.)

5                   (Whereupon, a lunch

6                   recess was taken.)

7                   CROSS EXAMINATION

8                   BY

9                   MS. LIN:

10               Q     Good afternoon, Ms. Houtsma. I just have a

11               couple of questions on behalf of Staff, literally a

12               handful of questions.

13               A     Good afternoon.

14               Q     I'm going to refer you to your surrebuttal

15               testimony, ComEd Exhibit 55.0 at Lines 116 through

16               117.

17               MR. THOMAS: Is that the revised version?

18               MS. LIN: I think the lines are the same, but,

19               yes, the second revised version.

20               MR. THOMAS: The lines again?

21               MS. LIN: 116 to 117.

22               MR. THOMAS: Thank you.

1 BY MS. LIN:

2 Q You state that pro forma plan additions  
3 have been updated today reflect activity through  
4 November 2010; is that correct?

5 A Correct.

6 Q Is it also true that activity projected  
7 through December 2010 and the first and second  
8 quarters of 2011 have also been updated?

9 A That's correct.

10 Q And these changes are all reflected on your  
11 work paper entitled, WPV 2.1A and support pages,  
12 correct?

13 A That's correct.

14 Q Now, going back to your surrebuttal  
15 testimony, it doesn't -- the second revised one at  
16 Lines 226 to 233, this is where you discuss ComEd  
17 Exhibit 6.3, correct?

18 A Yes.

19 Q You state here the 2009 historical test  
20 year includes pro forma plan additions through June  
21 of 2011, correct?

22 A Yes.

1           Q     Is it also correct that the 2011 future  
2     test year data included on ComEd Exhibit 6.3 would  
3     include plan additions through December 31, 2011?  
4           A     Yes.  
5           Q     Now, going to Line 730 at your surrebuttal  
6     testimony?  
7           A     I'm sorry. Could you repeat those lines.  
8           Q     Sure. Line 730 to 732.  
9                     This is where you state that ComEd  
10    will not oppose Staff's adjustment for a photovoltaic  
11    pilot costs, correct?  
12          A     Yes.  
13          Q     Do you know if you've reflected the removal  
14    of those costs for the revenue requirement on ComEd  
15    Exhibit 55.1 Schedule C1?  
16          A     I don't believe we removed them from the  
17    revenue requirement, no.  
18          MS. LIN: Thank you. That's it.  
19          JUDGE SAINSOT: I have just a couple questions  
20    for you.  
21          THE WITNESS: Okay.  
22

1 CROSS EXAMINATION

2 BY

3 JUDGE SAINSOT:

4 Q I notice when I was going over your  
5 testimony -- I'm going to be very brief -- on Page 7  
6 of ComEd Exhibit 29.0, you say that ComEd intends to  
7 appeal the ruling, the Appellate Court ruling,  
8 concerning Docket 07-0566.

9 A Yes.

10 Q Then you say:

11 "For the reasons outlined in  
12 my direct testimony, ComEd continues to  
13 believe that the approach applied in the  
14 direct case is appropriate."

15 I don't understand quite what that  
16 means. Does that mean that because you think -- and  
17 please, I'm just asking, so feel free to say no.

18 Does that mean you think that because  
19 you're appealing that decision, that the ruling  
20 regarding Docket No. 07-0566 is something you don't  
21 have to follow?

22 A It is -- for this purpose, we're treating

1     it as if it's still a pending case, we don't have a  
2     final order or an opinion on --

3             Q     Because you're appealing?

4             A     Yes.

5             Q     Do you know if ComEd filed a motion for a  
6     stay in that case?

7             A     I don't know.

8             Q     Do you know what the effect of a stay is?

9             A     In a general sense.

10            JUDGE SAINSOT:   Thank you. No further  
11     questions.

12            MS. LIN:   Judges, I have one sort of -- it's  
13     not a follow up.   It's a data request response that I  
14     need to get entered into the record through  
15     Ms. Houtsma.   This is something that just came in  
16     today, earlier today, so if you would allow me to do  
17     that really quickly, then I will be finished.

18                       Permission to approach?

19            JUDGE SAINSOT:   Can we dismiss Ms. Houtsma?

20            MS. LIN:   No.

21                       If I could approach the witness.

22            JUDGE SAINSOT:   All right.



1 CROSS EXAMINATION

2 BY

3 MS. LIN:

4 Q Ms. Houtsma, I'm going to give to you what  
5 has been marked Staff Exhibit 15 for identification.  
6 This is your response to 16.01, which was served  
7 earlier today; is that correct?

8 A That's correct.

9 Q Can you just give us the general content of  
10 what the DR response refers to?

11 A The response refers to a request to  
12 quantify the impact of the recent change in the  
13 corporate state income tax that was signed into law  
14 last week, and that changes the corporate income tax  
15 rate from 7.3 percent, as was reflected in our filing  
16 to a current rate of 9.5 percent, that's now in  
17 effect. And this data request reflects the mechanics  
18 of making that change.

19 Q And just for clarification, it's the  
20 response of DLH 19.01, correct?

21 A Yes.

22 Q I think I misspoke earlier.



1           MS. LIN: Judges, ComEd and Staff have entered  
2   into a stipulation to admit a certain number of DR  
3   responses that have been tendered between Staff and  
4   ComEd. So, I'm going to be reading those DR  
5   responses into the record. I will be -- our copier  
6   jammed up big time upstairs, so in the midst of my  
7   three copies, I was unable to extract one, so I will  
8   give these to Judge Teague in a little bit, and then  
9   give you the copies later on, but let me just read  
10  them really quickly into the record.

11                 Since I do have copies of this, I will  
12  give them to you. I will also be filing these on  
13  e-docket this afternoon. And there will be a public  
14  version and a confidential version filed on e-docket.

15           JUDGE SAINSOT: Okay. Then am I correct that  
16  Judge Teague gets the documents themselves, right?

17           MS. LIN: Yes, and she'll get a copy of this  
18  stipulation once I'm done reading off of them.

19           JUDGE SAINSOT: Okay.

20           MS. LIN: So it's ComEd-Staff 2.40,  
21  ComEd-Staff 2.43. ComEd-Staff 2.45,  
22  ComEd-Staff 2.46, ComEd-Staff 8.01, ComEd-Staff 8.02,

1 ComEd-Staff 9.24, ComEd-Staff 9.25, ComEd-Staff 9.26,  
2 ComEd-Staff 9.27, ComEd-Staff 9.28, ComEd-Staff 9.29,  
3 ComEd-Staff 9.30, ComEd-Staff 9.31, ComEd-Staff 9.32,  
4 ComEd-Staff 9.33, ComEd-Staff 9.34, ComEd-Staff  
5 12.01.

6 ME 4.01, DLH 15.01, DLH 15.02.  
7 DLH 19.01 confidential and public; DLH 19.02, DLH  
8 19.03. AG 3.34, plus Attachment 2, both the  
9 confidential and the public version of Attachment 2.

10 TEE 3.50 corrected, plus Attachment 1.  
11 TEE 7.03, TEE 10.01, with Attachment 1. TEE 10.04,  
12 with Attachment 1, confidential and public versions  
13 of Attachment 1. TEE 12.03 and the public version of  
14 Attachment 1. TEE 14.07, with Attachment 1.  
15 TEE 14.03 with Attachments 1, 2, 3, and 4.  
16 Attachment 4 is confidential and public, and  
17 Attachment 3 will actually be provided by hard copy  
18 to your Honors and to Judge Teague by ComEd counsel  
19 and will not be filed on e-docket.

20 TEE 16.01 and Attachment 1,  
21 TEE 16.02, with Attachment 1. TEE 17.01, plus  
22 confidential Attachment 1. TEE 17.02, TEE 17.03,

1       TEE 17.04, TEE 17.05.

2                       GER 10.01, GER 10.01 Supplemental with

3       confidential Attachment 1, GER 10.02 with

4       Attachment 1.

5                       MGM 2.11, plus confidential

6       Attachment 1.

7                       JF 1.01 with Attachment 1.

8                       JF 2.01 with confidential

9       Attachment 1.

10                      So, I'm just going to do ComEd-Staff

11       and list all the numbers from here on out.

12       ComEd-Staff 2.01, 2.02, 2.03, 2.07, 2.08, 2.10, 2.11,

13       2.12, 2.13, 2.14, 2.15, 2.16, 2.17, 2.20, 2.21, 2.22,

14       2.23, 2.24, 2.25, 7.10, 7.11, 9.02, 9.03, 9.04, 9.08,

15       10.06, 10.07. And then TS 14.01, TS 14.02. And last,

16       but not least, TS 14.03.

17               JUDGE DOLAN: Any objection?

18               MR. THOMAS: No objections.

19               JUDGE SAINSOT: Okay. Hearing no objection, all

20       of those exhibits that Ms. Lin painstakingly read

21       into the record are entered into evidence.

22

1 (Whereupon, ComEd-Staff 2.40,  
2 ComEd-Staff 2.43. ComEd-Staff  
3 2.45, ComEd-Staff 2.46,  
4 ComEd-Staff 8.01, ComEd-Staff  
5 8.02, ComEd-Staff 9.24,  
6 ComEd-Staff 9.25, ComEd-Staff  
7 9.26, ComEd-Staff 9.27,  
8 ComEd-Staff 9.28, ComEd-Staff  
9 9.29, ComEd-Staff 9.30,  
10 ComEd-Staff 9.31, ComEd-Staff  
11 9.32, ComEd-Staff 9.33,  
12 ComEd-Staff 9.34, ComEd-Staff  
13 12.01. ME 4.01, DLH 15.01, DLH  
14 15.02. DLH 19.01 confidential  
15 and public; DLH 19.02, DLH  
16 19.03. AG 3.34, plus  
17 Attachment 2, both the  
18 confidential and the public  
19 version of Attachment 2.  
20 TEE 3.50 corrected, plus  
21 Attachment 1. TEE 7.03, TEE  
22 10.01, with Attachment 1. TEE

1 10.04, with Attachment 1,  
2 confidential and public  
3 versions of Attachment 1. TEE  
4 12.03 and the public version of  
5 Attachment 1. TEE 14.07, with  
6 Attachment 1. TEE 14.03 with  
7 Attachments 1, 2, 3, and 4.  
8 Attachment 4 is confidential  
9 and public, and Attachment 3  
10 TEE 16.01 and Attachment 1,  
11 TEE 16.02, with Attachment 1.  
12 TEE 17.01, plus confidential  
13 Attachment 1. TEE 17.02, TEE  
14 17.03, TEE 17.04, TEE 17.05.  
15 GER 10.01, GER 10.01  
16 Supplemental with confidential  
17 Attachment 1, GER 10.02 with  
18 Attachment 1. MGM 2.11, plus  
19 confidential Attachment 1.  
20 JF 1.01 with Attachment 1.  
21 JF 2.01 with confidential  
22 Attachment 1 ComEd-Staff 2.01,

1                               2.02, 2.03, 2.07, 2.08, 2.10,  
2                               2.11, 2.12, 2.13, 2.14, 2.15,  
3                               2.16, 2.17, 2.20, 2.21, 2.22,  
4                               2.23, 2.24, 2.25, 7.10, 7.11,  
5                               9.02, 9.03, 9.04, 9.08, 10.06,  
6                               10.07, TS 14.01, TS 14.02.  
7                               TS 14.03 admitted into  
8                               evidence.)

9               JUDGE DOLAN: Go ahead and call your next  
10   witness.

11               MR. THOMAS: Mr. Fruehe.

12                               (Witness sworn.)

13                               MARTIN G. FRUEHE,  
14   called as a witness herein, having been first duly  
15   sworn, was examined and testified as follows:

16                               DIRECT EXAMINATION

17                               BY

18                               MR. THOMAS:

19               Q    Mr. Fruehe, would you state your full name  
20   for the record.

21               A    Martin G. Fruehe.

22               Q    By whom are you employed?



1           A     I'm employed by Commonwealth Edison.

2           Q     And what is your position there?

3           A     I am manager of revenue policy.

4           Q     Have you offered written testimony in this  
5 proceeding?

6           A     Yes.

7           Q     The first piece of testimony is marked  
8 ComEd Exhibit 30.0 revised. It is entitled, quote:  
9 "Rebuttal testimony of Martin G. Fruehe, Manager of  
10 Revenue Policy, Commonwealth Edison Company."  
11                     It consists of 35 pages of questions  
12 and answers and attached Exhibits 30.1 through 30.4B.  
13 There is both a confidential version and a public  
14 version.

15                     As described, is this your rebuttal  
16 testimony in this proceeding?

17          A     Yes, it is.

18          Q     And was it prepared by you or under your  
19 direction and control?

20          A     Yes, it was.

21          Q     Is it true and correct to the best of your  
22 knowledge and belief?

1           A     Yes.

2           Q     Have there been any updates in later  
3 testimony?

4           A     In surrebuttal testimony, Exhibit 56.0,  
5 there are updates to that document.

6           Q     So subject to that qualification, if I were  
7 to ask you the same questions today, would your  
8 answers be the same?

9           A     Yes, they would.

10          MR. THOMAS: And for the record, I think this  
11 was e-docket filed on November 22, 2010.

12          BY MR. THOMAS:

13          Q     Let me show you ComEd Exhibit 56.0, third  
14 revised, which is entitled, Surrebuttal Testimony of  
15 Martin G. Fruehe, Manager, Revenue Policy,  
16 Commonwealth Edison Company." It consists of 30 pages  
17 of questions and answers and attached Exhibits 56.1  
18 through 56.7.

19                   Is this your surrebuttal testimony in  
20 this proceeding?

21          A     Yes, it is.

22          Q     And was it prepared under your direction

1 and control?

2 A Yes, it was.

3 Q Is it true and correct to the best of your  
4 knowledge and belief?

5 A Yes, it is.

6 Q So if I were to ask you the same questions  
7 today, would your answers be the same?

8 A Yes, they would.

9 MR. THOMAS: For the record, this was e-docket  
10 filed today, January 20th. And the reason for the  
11 third revised version, there were no substantive  
12 changes. It turned out to be some sort of computer  
13 glitch that artificially separated words, so you  
14 would have "submit" and then there would be four  
15 spaces then "ted," so all that's happened between the  
16 third revised version and the second is make it  
17 easier for everybody to read and to correct that  
18 issue.

19 JUDGE DOLAN: All right.

20 MR. THOMAS: I hereby move into evidence ComEd  
21 Exhibits 30.0 revised both confidential and public  
22 versions and 56.0 third revised, and I tender

1 Mr. Fruehe for cross-examination.

2 JUDGE SAINSOT: Any objection?

3 (No response.)

4 JUDGE SAINSOT: Hearing none, your motion is  
5 granted, Counsel.

6 And ComEd Exhibits 30.0 with  
7 Attachments 30.1 through 30.4(b); is that right?

8 MR. THOMAS: B. B, as in boy. It's a small b  
9 in parens.

10 JUDGE SAINSOT: Right.

11 And ComEd Exhibit 56.0, third revised  
12 with Attachments 56.1 through 56.7 are entered into  
13 evidence and there are confidential and public  
14 versions of those documents.

15 (Whereupon, ComEd Exhibits 30.0  
16 with Attachments 30.1 through  
17 30.4(b); and ComEd Exhibit  
18 56.0, third revised with  
19 Attachments 56.1 through 56.7,  
20 confidential and public  
21 versions were admitted into  
22 evidence.)

1 JUDGE SAINSOT: Counsel, I just want to remind  
2 everyone in the year to try to adhere to the  
3 schedule. Please.

4 MS. SATTER: What specifically is the  
5 confidential page or pages?

6 JUDGE SAINSOT: 56.1 or maybe it was 56.7.

7 MR. THOMAS: That sounds correct.

8 MS. SATTER: Did you say 56.1?

9 JUDGE SAINSOT: It looks like 56.0, 56.1, 56.2  
10 and 56.3 revised, and I base that on the verification  
11 that was provided by Mr. Fruehe.

12 MR. THOMAS: May I go off the record for a  
13 moment.

14 (Whereupon, a discussion was had  
15 off the record.)

16 MR. THOMAS: In ComEd Exhibit 30.0, Page 17,  
17 Line 357, there is a number there for the data that  
18 is confidential.

19 JUDGE SAINSOT: But that's not a confidential  
20 document?

21 MR. THOMAS: No, it's simply pointing out what  
22 was confidential within that document.

1 JUDGE SAINSOT: Okay.

2 MR. THOMAS: Okay. I think you correctly  
3 identified that there are also confidential exhibits  
4 in the surrebuttal testimony, which is 56.3 and it  
5 includes the initial one and the errata sheet and  
6 then some documents, which are referenced in the  
7 third document there, which is an answer to a data  
8 request.

9 JUDGE SAINSOT: So 56.3 and attachments is  
10 confidential, and that's it?

11 MR. THOMAS: In that piece of testimony,  
12 correct.

13 Then in the additional testimony, the  
14 rebuttal testimony, it's only that one line --  
15 actually a figure in one line.

16 JUDGE SAINSOT: Okay.

17 MS. SATTER: Judge, the Office of the Attorney  
18 General had filed a motion specifically with regard  
19 to the response to this Data Request, DLH 1.04 and  
20 having to do with rate case expense, and you said  
21 that that was not to be treated as confidential.

22 So as a result, it seems to me that

1 the confidential designation should be removed for  
2 56.3. And in the rebuttal, similarly, the number  
3 comes from the Response DLH 1.04.

4 In addition, we discussed it the other  
5 day in connection with Ms. Hathhorn's cross. And  
6 there was no objection that it was confidential. So  
7 it's my understanding, both as a result of your  
8 ruling and lack of objection the other day, that this  
9 should be public and the confidential designation  
10 should be removed.

11 JUDGE SAINSOT: Counsel?

12 MR. THOMAS: We think that this ship has sailed  
13 from where we were when this was first drafted. So  
14 as best we can tell, we'll wait to see when we get  
15 there, but there probably is no confidential  
16 information surrounding those exhibits and the table.

17 MS. SATTER: So is it my understanding then  
18 that the testimony is being admitted without a  
19 confidential version or are you going to check it and  
20 then we'll talk about it?

21 MR. THOMAS: We are going to check it.

22 MS. SATTER: I'm okay with that.

1           MR. THOMAS: The point we are making here is if  
2 we get to the point where you're going to ask  
3 questions about that, unless there is something in  
4 the nature of your question that suggests that I'm  
5 wrong at this point, we will not be objecting on the  
6 grounds that it's confidential; and hence, we won't  
7 have to go into confidential session.

8           JUDGE SAINSOT: Does this impact Staff?

9           MS. McNEILL: No.

10          JUDGE SAINSOT: Just checking.

11          MS. SATTER: So as far as it being offered only  
12 on a public basis, is that -- do you want to wait  
13 till you do redirect or are you in agreement that,  
14 yes, there is no confidential version at this point?

15          MR. THOMAS: We do want to double-check. It  
16 would be subject to check, but right now I will say  
17 on the record, we believe there may be no further  
18 need to have it on a confidential basis, in which  
19 case we would have only the public version.

20          MR. RIPPIE: No. We would have the  
21 confidential version minus the confidential  
22 designation. It's all, I guess, maybe the point is



1     it's all on file.  So, if we can check this within  
2     the next 30 minutes or so, it is simply a matter of  
3     noting for the record that the public version can be  
4     disregarded as surplus, and the confidential version  
5     is now public.

6             MR. THOMAS:  Or alternatively, we can convert  
7     the confidential into a public version.

8             JUDGE SAINSOT:  Anybody have a sticker, that  
9     works too.

10            MR. RIPPPIE:  Or a pen.

11            JUDGE SAINSOT:  The only reason I ask is this  
12     is the last day and it's easy to forget about things,  
13     but, certainly going over it this afternoon, having  
14     somebody go over this is fine.  Just make sure by the  
15     end of the day it's all organized.

16            MS. SATTER:  The Office of the Attorney General  
17     has some questions.  Should we begin?

18            JUDGE SAINSOT:  Yes.

19                           CROSS EXAMINATION

20                           BY

21                           MS. SATTER:

22            Q     Mr. Fruehe?  Is that how you say your name,

1 Fruehe?

2 A Yes.

3 Q Okay. My name is Susan Satter. I am with  
4 the Office of the Attorney General. I'm going to ask  
5 you some questions starting with your surrebuttal  
6 testimony, Pages 4 and 5, where you talk about work  
7 force expense adjustments.

8 And on Page 5, you say that in  
9 Schedule C-2.4, ComEd has reflected over 11 million  
10 in sustainable savings associated with a reduction in  
11 employees because of its 2009 cost savings program.

12 The \$11 million reduction is based on  
13 a July 20, 2009 work force; is that correct?

14 MR. THOMAS: Ms. Satter, where is the figure  
15 you're referencing?

16 MS. SATTER: Line 88, Page 5.

17 THE WITNESS: I believe that number was updated  
18 in one of the errata filings, second errata.

19 BY MS. SATTER:

20 Q You want to tell me what it is.

21 A It should be 3.9 million and also on that  
22 same page, on Line 88, the exhibit is 6.2 and the

1 schedule is WPC-2.4.

2 Q So your attachment has changed? Is that  
3 what you're saying?

4 You say on line -- this is in your  
5 surrebuttal testimony Exhibit 56, Page 5, Line 88,  
6 the \$11 million number has now been reduced to 3.69  
7 million, correct?

8 A It's been changed to 3.69.

9 The 3.69 represents a subset of the  
10 \$11 million.

11 Q Okay. And is that subset to reflect  
12 employee expense only?

13 A That is a savings associated with a  
14 reduction of the 2009 employees.

15 Q So what does the \$11-million-figure include  
16 that the \$3.69-million-figure does not include?

17 A The \$11 million was all-inclusive of all  
18 the sustainable savings associated with the 2009 cost  
19 savings program.

20 So, for example, it also included  
21 savings at the BSC company, those costs that are  
22 allocated down to us, as well as changes to the 401-K

1     Program.   We reflect the bills, but those are not  
2     included in the number here.

3             Q     Okay.   Now, do you agree that the head  
4     count for Commonwealth Edison has decreased since  
5     July 2009?

6             A     Yes.

7             Q     Okay.   I'm going to show you an exhibit  
8     that we will now call AG Cross-Exhibit, I believe we  
9     are on 27.   I think to expedite this a little bit,  
10    I'm going to show you what we put together, so it  
11    will be AG Cross-Exhibit 27 and AG Cross-Exhibit 28  
12    because they're related, so let me just show those  
13    both to you.

14            JUDGE SAINSOT:   So 17 is Request No. AG 18.02;  
15    is that correct?

16            MS. SATTER:   27 is AG 18.02.

17                       Then 28 is several responses. This  
18    group updates itself.

19    By MS. SATTER:

20             Q     Can you take a look at these responses and  
21     tell me whether they are the responses to the  
22     question for the number of full-time and part-time

1 ComEd employees as shown on Schedule C-11.02 updated  
2 throughout the case?

3 A Yes, these are updates to those numbers.

4 Q And No. 27, that one goes through  
5 December 2010; is that right?

6 A That's correct.

7 Q And that's the most recent update that's  
8 available, correct?

9 A Yes, it is.

10 Q Okay. Now, would you agree that No. 27  
11 shows that by December 31, 2010 ComEd's head count  
12 had decreased to 5,692 from 5,820 in December of  
13 2009; is that correct? That would be on the third  
14 page?

15 A Yes, that's correct.

16 Q Now, going to AG Cross-Exhibit No. 28, can  
17 you tell me whether that shows the budgeted and the  
18 actual employee levels for each month from January  
19 2010 through October 2010 -- October 21, 2010?

20 A Yes, it does.

21 Q Now, are you aware that the number of  
22 employees that Mr. Effron included in his adjustment

1 is 5,712. And that would be based on the  
2 September 30, 2010 number?

3 A I'm sorry. You said 5,712?

4 Q Yes.

5 A And based on which number again?

6 Q September 30, 2010?

7 A Yes, that's correct.

8 Q And, in fact, that number, that 5,712  
9 number is 20 employees more than the number shown for  
10 October 31, 2010, shown on AG Cross-Exhibit 28; is  
11 that correct?

12 A I'm sorry. For October that year.

13 Q We're comparing -- no December 31st. He  
14 used September 30, 2010. I'm asking you if December  
15 31, 2010 shows 20 employees less?

16 A Yes, it does.

17 Q Okay.

18 JUDGE SAINSOT: Just for the record, which page  
19 are you on, Ms. Satter?

20 MS. SATTER: There are dates in the upper  
21 left-hand corner, it says "for the month ending" and  
22 that's -- can you see it?

1 JUDGE SAINSOT: Auh-huh. Upper left-hand  
2 corner.

3 MS. SATTER: Upper left. So the October is in  
4 the AG Cross-Exhibit 28, the December is the last  
5 page of AG Cross-Exhibit 27.

6 JUDGE SAINSOT: Okay. Thank you.

7 BY MS. SATTER:

8 Q Now, on Page 5 towards the bottom,  
9 Line 106, you say it's not appropriate to ignore pro  
10 forma wage and salary expense increase in 2010.

11 Now, I'd like to direct your attention  
12 to another exhibit.

13 And this will be AG Cross-Exhibit 29.

14 (Whereupon, AG Cross-Exhibit  
15 No. 29 was marked for  
16 identification.)

17 MR. THOMAS: Ms. Satter, for the record when  
18 you were referring to Page 5, the statement about not  
19 taking account pro forma wages and salaries, were you  
20 referring to Mr. Fruehe's rebuttal to Ms. Pearce?

21 MS. SATTER: Yes, it's in his surrebuttal  
22 testimony page -- Exhibit 56.

1           MR. THOMAS: I think the record should be clear  
2 of that point that the comment was not directed to  
3 Mr. Effron.

4           MS. SATTER: Okay.

5 BY MS. SATTER:

6           Q     Now, do you agree that the Company's  
7 response to this data request, which is the response  
8 to Staff Data Request BAP 23.01 shows ComEd payroll  
9 expense being lower in 2010 than in 2009, and I would  
10 like to draw your attention specifically to the  
11 second page, CRC 35.097.

12          A     The second page shows that the 2010  
13 forecast is approximately \$2.4 million lower.

14          JUDGE SAINSOT: Could you repeat that toward  
15 the end. I didn't hear you. You kind of trailed off  
16 there.

17          THE WITNESS: The second page shows that the  
18 2010 forecast is approximately \$2.4 million lower  
19 than the 2009.

20 BY MS. SATTER:

21          Q     Thank you.

22                     Now, I would like to turn to your



1       rebuttal testimony for a minute. That is Exhibit 30.

2                       At Pages 8 and 9, you take issue with  
3       Staff Witness Zolsdorf's recommendation that the  
4       Commission move charitable contributions to  
5       Pennsylvania organizations. But then in your  
6       surrebuttal, I didn't see you mention the  
7       Pennsylvania charities.

8                       Does the Company no longer contest the  
9       removal of the allocation of ComEd charitable  
10      contributions to Pennsylvania charities?

11              MR. THOMAS: Can you point to where in the  
12      surrebuttal you're directing your question?

13              MS. SATTER: Well, that's the point. It's not  
14      in the surrebuttal. That's why I'm asking him.

15              MR. THOMAS: It's the subject matter.

16      BY MS. SATTER:

17              Q       Page 6 through 8, you talk about charitable  
18      contributions in your surrebuttal.

19                      Do you recall not addressing it in  
20      your surrebuttal?

21              MR. THOMAS: Excuse me. That question only  
22      makes sense if the testimony is given on Pages 6 and

1     7, it's addressing that topic. We have got, again,  
2     sort of ships passing in the night.

3             JUDGE SAINSOT: Just rephrase. That's all.  
4     That will take care of it. You can't really recall  
5     not addressing which I think is his point. So just  
6     rephrase it.

7     BY MS. SATTER:

8             Q     Does the Company no longer contest the  
9     removal of the allocation to ComEd of charitable  
10    contributions to Pennsylvania charities from ComEd's  
11    charitable contribution expense?

12            A     The Company's position hasn't changed since  
13    my rebuttal position, so I would contest the issues.

14    BY MS. SATTER:

15            Q     You do contest it?

16            A     Yes.

17            Q     And in your surrebuttal, you mention that  
18    you contest the removal of donations for which  
19    ComEd's logo is displayed, right? Lines 29 to 143.

20                         You with me?

21            A     Yes.

22            Q     Okay. Now, you don't disagree that ComEd's

1 logo is, in fact, displayed in connection with  
2 certain charitable contributions, correct?

3 A That's right.

4 Q And you don't deny that ComEd receives  
5 recognition for its contributions where its logo is  
6 displayed, right?

7 A Can you define "recognition" for me,  
8 please.

9 Q Well, at Lines 138 in Exhibit 56, you  
10 state:

11 "Moreover if, for example,  
12 ComEd donates to the National Museum  
13 of Mexican Art and receives recognition  
14 by having its logo printed on the back  
15 page, that doesn't diminish the fact that  
16 the funds are being used for  
17 charitable purposes."

18 So it seems to me that you're  
19 recognizing that, yes, there is some recognition  
20 associated with the donation?

21 A Yes, if ComEd's name is printed on the back  
22 of the brochure as one of the corporate sponsors,

1       then, yes, we receive some form of recognition.

2               Q       And that recognition includes the idea that  
3       ComEd is doing good things for the community, right?

4               MR. THOMAS:   Objection. That's a question best  
5       directed to the charitable organization.

6               MS. SATTER:   The charitable organization is not  
7       asking ratepayers to pay for this expense.

8               JUDGE SAINSOT:   Overruled. She can ask that.

9               THE WITNESS:   I think it shows that ComEd  
10       receives recognition for the donation.

11       BY MS. SATTER:

12              Q       And the recognition is that they have made  
13       a donation to support a community organization,  
14       correct?

15              A       Yes.

16              Q       Now, in promotional advertising, is the  
17       idea that ComEd is letting the public know what it  
18       does for them?

19              A       I think there's several ways to look at  
20       promotional advertising; one may be just name  
21       recognition; one may be getting a certain message  
22       across; one may be selling a certain product, so I'm

1 not really sure how that relates here.

2 Q Okay. Have you quantified any benefit to  
3 Commonwealth Edison from the display of its logo in  
4 connection of any of the contributions that Staff has  
5 removed?

6 A No.

7 Q Now, would you agree that even after the  
8 Staff and the Staff proposed charitable contributions  
9 adjustment and the Attorney General Witness,  
10 Mr. Brosch's adjustment, the Company would still  
11 recover millions of dollars in contributions?

12 A My understanding is that both Staff and  
13 Attorney General allow for recovery through the  
14 charitable contributions.

15 Q 2 to 3 million? Does that sound right or  
16 do you not recall?

17 A Something similar around those lines,  
18 basically. I don't know the exact number.

19 Q Would you agree that charitable  
20 contribution decisions are inherently judgmental?

21 A I'm sorry. I'm not following the question.

22 What do you mean by "inherently

1 judgmental"?

2 Q Fair enough.

3 The decision of what charity gets a  
4 contribution requires the exercise of judgment as to  
5 which charity would be appropriate?

6 A Yes, it does take some judgment there, yes.

7 Q Could you briefly say how ComEd decides  
8 which charities to donate to, if you can do it in a  
9 nutshell. I'm not asking for a long process.

10 A I believe ComEd gets probably 1,000 -- but  
11 not 1,000, but numerous requests throughout the year  
12 for charitable donations.

13 We have a department that reviews  
14 that, reviews the request. They probably make some  
15 of the decisions there. I don't know the exact  
16 dollar amount that they have the ability to make a  
17 contribution, but some, I'm sure, run up to senior  
18 levels of management.

19 Q You also agree that ComEd ratepayers may  
20 contribute their own funds to charities of their  
21 choosing right?

22 A Certainly.

1           Q     And do you agree the financial ability of  
2     ComEd ratepayers to give charitably may be related to  
3     the amount of disposable income they have left after  
4     paying their monthly bills?

5           A     Well, I can't speak for all the ratepayers,  
6     but I suppose it's a decision that one would have to  
7     make individually based upon their own budget.

8           Q     Okay. If the Commission agrees with ComEd  
9     and includes the jurisdictional portion of the \$6  
10    million, approximately \$6 million in charitable  
11    contributions in the revenue requirement, would you  
12    agree that as a result ratepayers may support  
13    charities that could be different from the  
14    organizations they would choose to support if the  
15    money were left in their pockets?

16          A     It's possible.

17          Q     Have you looked at the charitable  
18    contributions to make a distinction between  
19    contributions that are for public welfare and charity  
20    versus those that are for educational, scientific or  
21    religious purposes?

22          A     I reviewed the list of charitable

1 contributions. I have not made a list of  
2 distinctions between each one of them as you  
3 described.

4 Q Just for the record, is Schedule C7 in the  
5 record? I believe some of the schedules are. We had  
6 this discussion a few days ago. We can discuss that  
7 maybe at a break.

8 MR. THOMAS: Sure.

9 MS. SATTER: If you don't know right off the  
10 top of your head.

11 MR. RIPPIE: Sure.

12 BY MS. SATTER:

13 Q Now, I'd like to refer you still in your  
14 surrebuttal, Page 8, concerning legal fees.

15 A Okay.

16 MR. THOMAS: Ms. Satter, we have checked, C7 is  
17 in the record.

18 MS. SATTER: Okay. Thank you.

19 MR. THOMAS: If you could repeat where you're  
20 with Mr. Fruehe.

21 MS. SATTER: I'm going to ask one question then  
22 in light of the fact that it's in the record, there



1 are descriptions of the organizations that received  
2 donations.

3 BY MS. SATTER:

4 Q Did the organizations write those  
5 descriptions or did the Company write those  
6 descriptions?

7 A I believe most of those came from the  
8 organizations themselves.

9 Q Okay. And if ComEd wrote them, it was based  
10 on something that the organization provided to them?

11 A Yes.

12 Q Okay. Now, we're at surrebuttal, Page 8,  
13 legal fees. Now, these legal fees are in connection  
14 with an IRS dispute concerning the tax treatment of  
15 the gain on the sale of fossil generating units in  
16 1999, right?

17 A That's correct.

18 Q Now, you talk about the use of a general  
19 allocator for expenses charged to Account 923, right?

20 A Yes.

21 Q Now, is Account 923 for outside agency fees  
22 or charges?

1           A     Solicited outside services, but, yes,  
2     outside agency fees would be included.

3           Q     "Outside services" is probably a better  
4     description.

5                     Now, this allocator divides expenses  
6     between transmission and distribution; is that right?

7           A     Yeah, the allocator that we use there is  
8     wages and salary.

9           Q     Say it again.

10          A     The allocator that we use there is a wages  
11     and salaries indicator.

12          Q     Wages and salaries?   Okay.

13                     And the allocation is between  
14     transmission and distribution; is that right?

15          A     The wages and salaries of each group, yes.

16          Q     Okay.   And you said that most of the  
17     charges in Account 923 cannot be allocated to a  
18     single function, right?

19          A     A lot of them can't, yes, that's correct.

20          Q     But the legal fees that you address at  
21     Lines 8 and 9 of your testimony relate to the tax  
22     consequences from the sale of these generating units,

1 right?

2 A Yes, it does.

3 Q So these expenses can be directly  
4 identified; isn't that right?

5 A These can, as well as others, but there are  
6 literally thousands of lines that go into that and  
7 legal fees can change from year to year.

8 (Whereupon, there was  
9 a change of reporter.)

10 Q Now, these fees were both identified and  
11 identified as related to generation; correct?

12 A These related to the sale and fossil --  
13 sale of fossil in the IRS dispute, yes.

14 Q And the sale of generating units is neither  
15 a transmission nor a distribution function, wouldn't  
16 you agree?

17 A Yes.

18 Q Now, I'm going to ask you a couple  
19 questions about sporting events, which is next in  
20 your surrebuttal.

21 You agree that costs for the Chicago  
22 sporting events and sports stadiums suites are

1 initially charged to a FERC account 426.5?

2 A That's correct.

3 Q And that's a below the line account; right?

4 A Yes.

5 Q In the 2009 test year \$511,000 of ticket  
6 expense and catering costs were charged back to  
7 ComEd's operating departments, now included in the  
8 ComEd revenue requirement.

9 Can you tell me what you mean by  
10 charged back.

11 A This position here is only partially  
12 correct. We have updated it in a DR response. I  
13 don't have the exact number in front of me right now,  
14 but basically there were -- what happens here is that  
15 the initial charge from below the line to above the  
16 line is correct.

17 What we did not catch, though, in the  
18 final review of this is that the majority of those  
19 costs, all but about 64,000 of operating expense and  
20 about \$8,000 that went to plant is actually  
21 reclassified then to below the line expense. So  
22 there are some expenses that are still above the

1 line, but most of that 511,000 has been re- -- at the  
2 end of month gets reclassified below the line. And  
3 the difference here really is a FERC and GAAP look at  
4 them.

5 Q Okay. So then tell me if I understand this  
6 right, that there is no longer -- Commonwealth Edison  
7 is no longer claiming \$511,000 in ticket expense for  
8 the test year. Is that what you're saying?

9 A That's correct.

10 Q Okay. Is there a remainder that they're  
11 still seeking?

12 A Yes, that was the 64,000 of O&M expense  
13 that I mentioned as well as the \$8,000 of the amount  
14 that went to capital.

15 JUDGE SAINSOT: Are those related to the  
16 sporting events? Now I'm really confused. I don't  
17 think of O&M and capital as tickets to the sports  
18 games.

19 THE WITNESS: It's all on how it gets charged  
20 now. The amounts that I'm referring to, the 64,000  
21 and the \$8,000, are actually -- and when they're  
22 initially charged from below the line to back above

1 the line, they go to accounts that are spread out  
2 among other accounts. They're called clearing  
3 accounts. So some of that actually goes into a --  
4 goes to a capital clearing account, which then gets  
5 spread over different parts -- different pieces of  
6 capital investments.

7 JUDGE SAINSOT: Okay. Thank you.

8 BY MS. SATTER:

9 Q So of the 511,000, 64,000 has been shifted  
10 to O&M; is that right?

11 A \$64,000 remains above the line for FERC  
12 reporting purposes, yes. So that would be included  
13 in our revenue requirement.

14 Q And then an additional 8,000 is added to  
15 your rate base?

16 A It went into capital. So, yes, in the rate  
17 base.

18 Q Okay. Now, I want to ask you some  
19 questions about the new business revenue credit. Let  
20 me make sure I've got the right spot for you.

21 Page 20.

22 A Of which document?

1           Q     Of your surrebuttal.

2                     Okay. At Lines 457 to 459.

3           A     You're on Page 22 then?

4           Q     No, hold on. Let me make sure -- because

5 I'm not sure this is -- I'm sorry. I was in the

6 wrong piece of testimony. Let me make sure I've got

7 the right piece of testimony.

8                     Okay. I'm sorry. It was in your

9 rebuttal, Page 21, Line 457.

10                    You say -- I'll wait for you to get

11 there.

12          A     Okay.

13          Q     You say, Since ComEd has requested

14 inclusion of its pro forma plant additions, it is

15 reasonable to offset that cost increase with the

16 revenues it may receive from new customers for that

17 same period; right?

18          A     Yes.

19          Q     So you are tying the new business revenue

20 credit to new business plant additions; right?

21          A     We are changing the new business revenue

22 credit to the change in the customers that may be

1 realized as we move into 2011.

2 Q So the same time frame should apply?

3 A Yes.

4 Q Now, you also express concern that some  
5 large C&I -- that's commercial and industrial?

6 A That's correct.

7 Q Okay. You express the concern that some  
8 large C&I customers may shut down and others may  
9 downsize their operations; right?

10 A That's right.

11 Q And normally there would not be plant  
12 additions in associated with somebody -- with  
13 customers shutting down or downsizing; right?

14 A That's correct. And many of the ones that  
15 downsize move into the small C&I group. So you might  
16 see a -- somewhat of an increase on there just  
17 because of customer migration.

18 Q Okay. Now, I believe it was the -- one of  
19 your exhibits, 56.4, shows a reduction to large C&I  
20 customers of 1.51 percent; right?

21 Sorry we're going back and forth here,  
22 but you talk about it in both places.



1           A     Yes, Exhibit 56.4 has a reduction of large  
2 C&I customers of 1.51 percent.

3           Q     Okay. So looking at that Exhibit 56.4, is  
4 it right that the 1.5 percent decrease is based on  
5 the difference between the average number of  
6 customers in the test year and the average number of  
7 customers for the 18-month period ending June 2011?

8           A     Yes, it is.

9           Q     Now, the Company's proposing to include  
10 plant additions through June 30th of 2011 in rate  
11 base; right?

12          A     Yes, we are.

13          Q     And the Company's rate base reflects plant  
14 and service as of June 30th, 2011; right?

15          A     Yes.

16          Q     It does not reflect the average balance for  
17 the 18-month period ending June 2011; right?

18          A     That's correct.

19          Q     Don't you agree that to be consistent the  
20 adjustment for customer growth should reflect the  
21 number of customers as of June 30th, 2011, and not  
22 the average for the 18-month period leading up to

1       June 2011?

2           A     Not necessarily.

3           Q     Do you know whether the average for the

4       18-month period is higher or lower than the year

5       end -- than the June 2011 amount --

6           A     I'm sorry --

7           Q     -- monthly amount?

8           A     -- which numbers am I looking at?

9                     The average number for the large C&I

10       for January 10th through the June '11 time period,

11       that average is 2,000. And I guess I kind of lost

12       your question there after that.

13          Q     Okay. By looking at 56.4, would we be able

14       to say that the customers expected for June 2011 are

15       indicated in the last line?

16          A     It shows the anticipated amount of large

17       C&I customers in June 2011, yes.

18          Q     Okay. And the number that you used was an

19       average?

20          A     Yes, that's the way the calculation is

21       performed.

22          Q     Now, would you agree that the Company's

1 forecasts do not reflect any migration of large C&I  
2 to small C&I?

3 A No, I would not agree with that.

4 Q So it already incorporates --

5 A It would incorporate migration from large  
6 C&I to small C&I, yes.

7 Q Can you show me where in your testimony you  
8 discuss that, that being the fact of the migration  
9 and how much it is if you've quantified that.

10 A I don't have it quantified, ma'am.

11 Q Oh, there was no quantification?

12 A No, there is no quantification of that.

13 Q So it's your belief that there is some  
14 migration; is that right?

15 A That is my understanding from our Load  
16 Forecasting Department that there is some migration  
17 due to the economic slowdown, companies are not using  
18 as much electricity as they may have had in 2008 or  
19 2009. So some of the reduction in the large C&I is  
20 due to customers moving below the 1,000-kilowatt  
21 level.

22 Q Do you know what the average use per large

1 C&I customer is?

2 A When you say "average use," are you talking  
3 kilowatts or kilowatt hours or annual use? Monthly  
4 use? What --

5 Q This would be by kilowatt hours.

6 A On an annual basis or a monthly basis?

7 Q It should be -- you know, the same if --  
8 you know, what the relationship is.

9 A In my Exhibit 56 -- I'm sorry. I misspoke.  
10 In my Exhibit 30.2 WPC-2.9, I list out the annual  
11 kilowatt hour use per customer for the residential  
12 small C&I and large C&I classes.

13 Is that what you're referring to?

14 Q Yeah. I believe so. Hold on. Let me make  
15 sure I'm with you.

16 Which work paper?

17 A It would be Exhibit 30.2, work paper  
18 WPC-2.9.

19 Q Oh, I've got that here. Okay. Yes.

20 Do you agree that there is a very  
21 large discrepancy between the usage of large C&I  
22 customers and small C&I customers on average?

1           A     On average the large C&I use a lot more  
2 kilowatt hours than the small C&I.

3           Q     Looking at your -- the work paper that you  
4 refer to, is that -- that's not attached to your  
5 testimony, is it?

6           A     It would be Exhibit 30.2 attached to my  
7 testimony, yes.

8           Q     It is 30.2.

9                     Okay. Then looking at that exhibit on  
10 the right-hand side it says, Kilowatt hours per  
11 customer; is that right?

12          A     Yes, it is.

13          Q     So if we look at -- if we compare Columns I  
14 and J, and looking at it annually at Row 13, would  
15 that show that the kilowatt hour per customer for the  
16 small C&I customer is about 90,000 -- 90,816 compared  
17 to the large C&I average of 13,226,000?

18          A     That's correct, what it shows.

19          Q     If we were to assume that 30 -- that a  
20 reduction of 30 large C&I customers moved to the  
21 small C&I category, have you -- would you agree that  
22 the amount of revenue involved would be about

1       \$49,000?

2                               And if you like, we can walk through  
3       it.

4               A       I'm sorry. How did you come up -- how did  
5       you come up with those numbers? I don't know how you  
6       came up with those numbers. So...

7               Q       Fair enough. Fair enough.

8                               Let me ask you then, if you took the  
9       total number of revenue associated with the small C&I  
10      customers, what would that be? Would that be 3.3  
11      million?

12              MR. THOMAS: Where are you getting that figure  
13      from?

14              MS. SATTER: This is still WPC, dash, 2.9,  
15      Line 18.

16              MR. THOMAS: I think the problem we're having  
17      is that the -- the delivery service's customers don't  
18      pay based on kilowatt hour.

19              MS. SATTER: I'm talking about revenues. This  
20      figure is a revenue figure.

21              MR. THOMAS: Revenues are based on what they  
22      pay.

1           MS. SATTER: The question is the per customer  
2 revenues. I'm just -- we just did an order of  
3 magnitude just so we can see the size of the  
4 customers. And now I'm asking you about the revenue  
5 per customer that would be -- wait. Let me finish.  
6 So you can understand what I'm talking about and then  
7 you can object if you care to.

8           JUDGE SAINSOT: Well, I'm kind of -- could  
9 you -- I'm not sure how this is relevant when you're  
10 starting to talk about 30 customers. You're kind of  
11 losing me there.

12          JUDGE DOLAN: It's just a hypothetical.

13          MS. SATTER: Let me see if I can back up a  
14 little bit.

15 BY MS. SATTER:

16          Q In the -- in calculating the new business  
17 credit, you said that -- you said Mr. Effron did not  
18 account for the -- for a possible shift of large C&I  
19 customers to the small C&I customer group.

20          A That's right.

21          Q Okay. And do you know what the average  
22 effect would be of that shift -- or do you know what

1 the revenue effect would be of that shift that you  
2 suggest from large C&I to small C&I?

3 A I have not calculated that amount. There's  
4 several unknowns here that make that rather difficult  
5 to do. The first one is the number of customers that  
6 do shift, although Load Forecasting Department  
7 assures me that some have downsized operations.

8 The other unknown is the amount of  
9 kilowatt hours that those customers were using at the  
10 time of the shift. So they were probably much below  
11 the average that we're showing here and those are  
12 probably kind of a borderline customer that moved  
13 from one category to the other.

14 Q Right.

15 A So my thought is is that the -- just  
16 looking at a per-kilowatt-hours basis here, it would  
17 be in the very low end of that kilowatt hour range.

18 Q Okay. So you would expect that if a  
19 customer left the large C&I category and went to the  
20 small C&I category, it was a customer that was kind  
21 of on the border there, it wasn't one of the  
22 super-large kilowatt hour users?



1           A     Most likely, yes.

2           Q     Okay.  And in your work paper, at Line 15,  
3     I believe you show that you're expecting to lose 30  
4     large C&I customers?

5           A     That's what it shows, yes.

6           Q     Okay.  So if each of those large C&I  
7     customers moved to the small C&I category, then  
8     couldn't you quantify approximately -- if each one of  
9     them moved, all 30 moved to the small C&I, couldn't  
10    you quantify or estimate the effect by applying the  
11    average -- the per customer revenue to those 30 --  
12    the small C&I per customer revenue to those 30?

13          A     Some of those 30 may be in there all right.  
14    I don't know exactly how you would do that.

15          Q     Some of those 30 might be in there already?

16          A     Yeah, some of the 30 may be in -- or most  
17    likely are in the 2802 that's in Column F, Line 15,  
18    and it would be accounted for in that -- in that  
19    number.

20          Q     Okay.  So if they're already in there, then  
21    they're already in the calculation?

22          A     Most likely, yes.

1           Q     And then you wouldn't have to make an  
2 additional adjustment for them?

3           A     I don't think you should, no.

4           Q     Now, I'd like to turn to your rebuttal  
5 testimony.

6           A     Okay.

7           Q     And at Page 14, Line 292, you say ComEd  
8 identified \$270,000 of legal costs related to the  
9 alternative regulation case incurred as of  
10 October 2010; is that right?

11          A     That's what it says, yes.

12          Q     Okay. Now, I believe that the Staff has  
13 introduced into the record the Company's response to  
14 DLH 19.01. And do you recall in -- in your testimony  
15 you say you refer to the response to Staff Data  
16 Request DLH 16.01?

17          A     That's correct.

18          Q     Do you know whether 19.01 is an update for  
19 that or a follow-up to that?

20          A     I don't recall exactly what DLH 19.01 was.  
21 I don't -- yeah.

22           MS. SATTER: We have previously marked -- it

1 would be AG Cross-Exhibit 30, which includes DLH  
2 16.01 through DLH 19.01, 19.02 and 19.03, which Staff  
3 has now introduced separately. So in the interest of  
4 not duplicating efforts and to give a complete  
5 record, maybe we'll just offer 16.01 but still be  
6 able to refer to the other pages because they are now  
7 in the record under the Staff group exhibit.

8 JUDGE SAINSOT: As long as you can find them in  
9 this teeny, tiny record.

10 MS. SATTER: I'm going to hand you copies of  
11 them. It's the same document just for ease of  
12 discussion.

13 JUDGE SAINSOT: And what are we calling this?  
14 AG Cross-Exhibit 30?

15 MS. SATTER: Yes.

16 (Whereupon, AG Cross-Exhibit  
17 No. 30 was marked for  
18 identification.)

19 BY MS. SATTER:

20 Q Now, what's been marked as AG --

21 MR. THOMAS: Excuse me, Counsel. I'm just  
22 going to make a suggestion, which is, it seems to me

1 even though Counsel has represented -- and I'm sure  
2 she's right -- that some of these are already in the  
3 record under different numbers, that -- why don't we  
4 just state for the record which ones are being  
5 combined and then call it AG Cross-Exhibit 30 and  
6 deal with it that way.

7 I just think otherwise we're going to  
8 be utterly confused, if that meets the judges'  
9 approval.

10 JUDGE SAINSOT: Now I'm confused. I thought  
11 you were going to -- you wanted to admit the one  
12 document that was -- that Staff didn't seek to  
13 introduce.

14 MS. SATTER: And that's correct.

15 JUDGE SAINSOT: And that's this document?

16 MS. SATTER: It's the one page. It's the  
17 16.01.

18 JUDGE SAINSOT: So you have Staff's list?

19 MS. SATTER: Yes, I have Staff's list and they  
20 read it --

21 JUDGE SAINSOT: Right.

22 MS. SATTER: -- just before Mr. Fruehe got on

1 the stand and 19.01 -- I'm sorry -- DLH 19.01, 19.02  
2 and 19.03 are included. The only difference, I  
3 guess -- oh, I see. I have the public version of  
4 19.01.

5 MR. THOMAS: Right.

6 MS. SATTER: Just for purposes of this  
7 discussion.

8 But -- so the only thing that's new --  
9 the only thing that AG Cross-Exhibit 30 would be  
10 would be the response to DLH 16.01.

11 JUDGE SAINSOT: Okay. And does that clear it  
12 up, Mr. Smith --

13 MR. THOMAS: I guess it is.

14 JUDGE SAINSOT: -- Thomas?

15 MR. THOMAS: If -- my only problem was if  
16 Counsel was going to be asking questions that related  
17 back to each one of these that are connected, I can  
18 see this being completely confused and I thought it  
19 would just be easier -- I'm not doubting at all that  
20 the -- when she says -- are in the record are in the  
21 record. I'm just thinking we ought to recreate an AG  
22 Cross-Exhibit 30 that includes all of those and then

1 she can ask whatever questions she wants and it'll  
2 just -- or is there only one of these that you're  
3 asking --

4 MS. SATTER: There's only the one -- well, no,  
5 I -- I provided 19.01 through 19.03 so that he could  
6 look at them. They're already in the record, but  
7 them being in the record doesn't help him sitting  
8 here. So that's why I brought copies.

9 MR. THOMAS: So it's only 16.01 that you're  
10 going to ask a question, but the others are to  
11 refresh his recollection or to give him context,  
12 that's fine.

13 JUDGE SAINSOT: Right. And 16.01 is the one  
14 that's not entered into evidence.

15 MR. THOMAS: Okay.

16 JUDGE SAINSOT: So the attachments to AG  
17 Cross-Exhibit 30 for the record are background  
18 information for Mr. Fruehe.

19 MS. SATTER: Thank you. Exactly.

20 BY MS. SATTER:

21 Q So in your rebuttal testimony you refer to  
22 your response to DLH 16.01 where you identified the

1     \$270,000 in legal costs related to alt reg; right?

2           A     That's correct.

3           Q     And what I've shown -- what I've handed you

4     as AG Cross-Exhibit 30 is that response; is that

5     right?

6           A     That's right.

7           Q     Okay. And in that response you say ComEd

8     did not initially estimate its legal expenses for alt

9     reg -- for the alternative regulation proposal

10    separately from the rate case legal expenses; right?

11          A     That's correct. That's what it says.

12          Q     But then you say it has incurred

13    approximately \$270,000 to date?

14          A     That's correct.

15          Q     Then -- now, you're familiar with the

16    contracts with the legal team for this rate case;

17    correct?

18          A     I have a general familiarity with them. I

19    was not involved in the actual creation of contracts.

20          Q     Okay. Are you aware that the Rooney Rippie

21    & Ratnaswamy firm is being paid a flat fee of \$2.425

22    million?

1           A     I don't recall it being the exact number.  
2     I just don't recall off the top of my head; but, yes,  
3     I am familiar that the flat fee is in that range.  
4     Yes.

5           Q     Okay. We can introduce the contract or you  
6     can accept that number, subject to check.

7                     What are you more comfortable with  
8     doing?

9           MR. RIPPIE: That's the correct number.

10          BY MS. SATTER:

11          Q     Okay. And are you also aware that there  
12     was a second flat fee contract with the Eimer Stahl  
13     firm?

14          A     I don't believe we had a flat fee with the  
15     Eimer Stahl firm.

16          Q     What was the -- do you remember what the  
17     terms were for them?

18          A     I believe it was an hour -- you know, a  
19     time and hour contract for Eimer Stahl.

20          Q     Could you -- would you accept, subject to  
21     check, that the fee for Eimer Stahl was \$1.6 million?

22          MR. THOMAS: For which proceeding?



1 BY MS. SATTER:

2 Q That that was the amount that was -- for  
3 this proceeding.

4 A I just don't recall that number.

5 Q I'm going to have to take a minute because  
6 I have the data request response, and would that  
7 refresh your recollection?

8 A Certainly.

9 MR. RIPPIE: We can stipulate to that. We  
10 don't have to waste more time.

11 JUDGE SAINSOT: Good idea.

12 JUDGE DOLAN: Okay.

13 BY MS. SATTER:

14 Q Okay. So do you know whether the billing  
15 produced to Staff and the parties in response to  
16 DLA -- DLH data requests, if they showed an  
17 itemization for either of those firms?

18 A You're asking did the DL- -- did the data  
19 provided in DLH 16.01 provide an itemization for  
20 those firms? DLH 16.01 only provided a single number  
21 for the estimated legal costs.

22 Q Let me show you what we will mark as AG

1 Cross-Exhibit 31 and 32.

2 (Whereupon, AG Cross-Exhibit  
3 Nos. 31 and 32 were marked for  
4 identification.)

5 BY MS. SATTER:

6 Q And for the record, the response to DLH  
7 1.04 Supp 4 corrected Attach 5 is AG Cross 31. And  
8 the response to DLH 1.04 Supp 5 Attach 5 is No. 32.  
9 Did I say that right? In other words, Supp 4 is 31;  
10 Supp 5 is 32.

11 Now, do you recognize this as the  
12 production of legal bills?

13 A Yes, I recognize this as the invoices we  
14 received from the law firms.

15 Q Okay. Now, looking at AG Cross-Exhibit 31,  
16 the first page after the cover page, that would be a  
17 CRC35790.

18 A Okay.

19 Q Can you tell me, does that represent the  
20 bill from Eimer Stahl?

21 A Yes, it does.

22 Q And that appears to be for October; is that

1 right?

2 A The invoice date is October 20th, but it's  
3 an invoice for work performed in September.

4 Q Okay. And if you look at that 35790  
5 through 92, would you agree with me that there are no  
6 hours listed for work performed?

7 A That's correct.

8 Q There's a listing of expenses, though; is  
9 that right?

10 A That's right.

11 Q And now I'd like to draw your attention to  
12 CRC35797 -- it's a few pages down -- through 35799.

13 A Okay.

14 Q And that's -- would you agree with me that  
15 that is the invoice for the Rooney Rippie Ratnaswamy  
16 firm?

17 A Yes, it is.

18 Q And is it correct that there are expenses  
19 shown on 35798?

20 A Yes, there are.

21 Q But there are no hourly billings included  
22 for the attorneys' time; is that right?

1           A     That's correct.

2           Q     And there's no description of the  
3 attorneys' services; is that correct?

4           A     That's correct.

5           Q     Now, I'd like to turn your attention to AG  
6 Cross-Exhibit 32, which is the DLH 1.04 Supp 5 Attach  
7 5.

8                     And can you look with me at 35415 and  
9 416.

10          A     Okay.

11          Q     And tell me whether there is any  
12 identification of hours perfor- -- hours or services  
13 performed.

14          A     That's correct, there are no hours.

15          Q     But there is a listing of some expenses;  
16 right?

17          A     That's correct.

18          Q     So it's the same as the other -- as AG  
19 Cross 31; right?

20          A     Yes, it is.

21          Q     And this is for the Eimer Stahl firm --

22          A     Yes, it is.

1           Q     -- at 35415?

2                     And if I can turn your attention to

3     CRC35428 and 35429, is that the billing for the

4     Rooney Rippie Ratnaswamy firm?

5           A     Yes, it is.

6           Q     And this is for September 1st through

7     September 30th; right?

8           A     That's correct.

9           Q     And there's no detail as to the services

10    performed; is that right?

11          A     That's correct.

12          Q     And is it true that these represent the

13    invoices that were prepared in response to data

14    requests in connection with the rate case expense?

15          A     They were prepared in accordance with DLH

16    104, yes, which was a rate case expense DR.

17          Q     Now, you agreed, subject to check, before

18    that 1.6 million and 2.425 million were the set fees?

19          A     Yes.

20          Q     So, would you agree that that equals 4.025

21    million?

22          A     Yes.

1           Q     And that the total legal fee was 5 million;  
2     is that right?

3           A     Estimated legal costs are \$5 million in the  
4     case.

5           Q     Okay. So 4 -- over 4 million are in the  
6     this flat fee category?

7           A     Yes.

8           Q     Okay. Now, turning back to the attachments  
9     to AG Cross-Exhibit 30, this would be the response to  
10    DLH 19.01.

11                         In that response it says that for the  
12    months of September and October you determined that  
13    18.33 percent of total hours were assigned or  
14    attributable to the alternative regulation case,  
15    Docket 10-0527; right?

16           A     Yes, that was a number that was estimated  
17    at the time based upon the information we'd received  
18    from the attorneys, yes.

19           Q     Okay. But you didn't produce any  
20    additional documentation other than what we talked  
21    about in AG Cross-Exhibits 31 and 32, right, that  
22    would show an itemization for those two firms?

1           A     I believe that's correct, yes.

2           Q     Do you know when the direct case was filed  
3     in the alternative regulation case?  In other words,  
4     when the direct testimony was filed?

5           A     Direct testimony was filed shortly after we  
6     filed this case.  I believe it was three to four  
7     weeks later, sometime around there.

8           Q     How about August 31st?  Does that sound  
9     right?

10          A     Probably about right.  Yeah.

11          Q     And we can verify that on e-Docket;  
12     right --

13          A     Sure.

14          Q     -- so there's...

15                     And do you remember -- or would you  
16     accept, subject to check, that rebuttal in 10-0527  
17     was filed in November?

18          A     Subject to check, yes.

19          MR. RIPPKE:  We can -- tell you what.  Why  
20     don't we stipulate the direct was filed on  
21     August 31st and I believe rebuttal was filed  
22     December 3rd.

1           MS. SATTER: Or your rebuttal was filed  
2   December 3rd.

3           MR. RIPPIE: Correct. Staff and Intervenor  
4   rebuttal November 9th.

5           MS. SATTER: November 9th.

6   BY MS. SATTER:

7           Q     So September and October billing would not  
8   include either of those two events; correct?

9           A     Well, it depends when you say -- what do  
10   you mean by "those two events"? The actual filing of  
11   those documents?

12          Q     Well, let's put it this way: By September  
13   the direct testimony of the Company was already  
14   prepared?

15          A     Yes.

16          Q     And you could not review the rebuttal  
17   testimony of Staff and Intervenor until it was filed  
18   on November 9th; right?

19          A     That's right.

20          Q     So neither of those two functions would  
21   occur in September or October?

22          A     The actual filings of the documents,



1 correct.

2 Q A couple of more.

3 Let me make sure I'm in the right

4 testimony here before I direct you.

5 Okay. In your rebuttal testimony at

6 Page 15, Line 12 through 14, you comment that

7 Dr. Hewings and Andrade's testimony --

8 A I'm sorry. You said Page 15, what lines?

9 Q 313 to 315.

10 A 313 to 314?

11 Q Yeah.

12 A Okay.

13 Q You said that the -- essentially the

14 costs -- disallowing the costs associated to them

15 could only be done with the benefit of hindsight

16 bias; right?

17 A That's what it says, yes.

18 Q And you say that the costs related to these

19 witnesses was incurred in good faith?

20 A That's correct.

21 Q Now, you agree that the Commission has the

22 right and, in fact, the obligation to reject costs

1     that it believes are inappropriately included in a  
2     revenue requirement; right?

3             A     I believe the Commission has the authority  
4     to remove items in the revenue requirement that it  
5     does not believe are prudent and reasonable, yes.

6             Q     And they can do that even if the Company  
7     included those costs in good faith; right?

8             A     Again, if they deem them imprudent, then  
9     yes.

10            Q     And you would never assert that the Company  
11    incurred any cost in bad faith; right?

12            A     Correct.

13            Q     On Page 16, Line 340, you refer to costs  
14    associated with Moul & Associates, M-o-u-l.

15            A     Yes.

16            Q     And what did Mr. Moul do for you?

17            A     Mr. Moul provided an expert's point of  
18    view, an outside point of view of cost of equity.

19            Q     Was that in addition to the points of view  
20    provided by Mr. Hadaway and Mr. Seligson?

21            A     It was done separately from those two  
22    witnesses, yes.

1           Q     Was it done before or after they were --  
2     before or after their analysis was prepared?

3           A     I don't recall exactly when it was  
4     prepared.

5           Q     Do you know why you choose not to use  
6     Mr. Moul?

7           A     Mr. Moul was used as a reference point.

8           MR. RIPPIE:   Your Honor, the decision by  
9     attorneys to file or not file a witness's testimony  
10    or to deem a witness a consulting expert as opposed  
11    to a testifying expert is privileged.   And any  
12    conversations that this witness had with counsel on  
13    the subject is privileged.   And inquiring of this  
14    witness about information that he doesn't know  
15    because he hadn't had those conversations, would --  
16    he's not competent to testify to.

17                       The question of whether or not  
18    Mr. Moul was used in a particular capacity, i.e., as  
19    a testifying witness versus whether he was used, as  
20    Mr. Fruehe testified, as a consulting witness, is  
21    also not relevant as to whether or not it was useful.

22           JUDGE DOLAN:   I'll sustain that objection.

1 MS. SATTER: Now, I believe that Mr. Fruehe's  
2 the sponsoring witness for the DLH series of data  
3 requests. So previously two items from that series  
4 were offered into evidence on the cross-examination  
5 of Miss Hathhorn and they were admitted solely for  
6 impeachment purposes.

7 So what I would like to do is ask to  
8 admit those documents substantively through  
9 Mr. Fruehe.

10 MR. THOMAS: If he's the sponsor for them --

11 MS. SATTER: Yes.

12 MR. THOMAS: -- we have no problem.

13 MS. SATTER: And that would be AG 15, which is  
14 the Sullivan invoices and AG Cross-Exhibit -- I'm  
15 sorry. Strike that.

16 The Sullivan invoices are AG  
17 Cross-Exhibit 21 and the Chicago Partner invoices are  
18 AG Cross-Exhibit 15.

19 So I would request that those be  
20 verified by the witness and accepted for the  
21 substance of the matter.

22

1 BY MS. SATTER:

2 Q And then finally --

3 MR. THOMAS: Do you have them or are you just

4 asking that he do this sometime before the record

5 closes? What are we doing here?

6 MS. SATTER: I can show them to him if that

7 would be more --

8 MR. THOMAS: I think that would be appropriate.

9 MS. SATTER: -- convenient.

10 But they've been previously admitted

11 so I want that record to be clear.

12 JUDGE DOLAN: Okay. Just to be clear,

13 Miss Satter, what were those exhibits again? They

14 were 19 and...?

15 MS. SATTER: It was 15 and 21.

16 JUDGE DOLAN: 15 and 21. Okay.

17 MS. SATTER: Let me change that then. The

18 Chicago -- I believe the Chicago Partners was AG

19 Cross-Exhibit 18 and the Sullivan invoice was AG

20 Cross-Exhibit 21.

21 JUDGE DOLAN: Okay.

22 MR. THOMAS: I'm now confused.

1                   Let's see. The Sullivan is still  
2 Exhibit 21?  
3           MS. SATTER: Yes.  
4           MR. THOMAS: Chicago Partners is --  
5           MS. SATTER: 18. No, I'm sorry --  
6           MR. THOMAS: It says 15 on there.  
7           MS. SATTER: I know. It was changed in the  
8 course of the hearing because I marked them before  
9 realizing that other people had offered...  
10          JUDGE SAINSOT: Right.  
11          MS. SATTER: I have one more data request that  
12 I wanted to offer, and that would be No. 33, I  
13 believe.  
14                               (Whereupon, AG Cross-Exhibit  
15                               No. 33 was marked for  
16                               identification.)  
17          JUDGE DOLAN: Are you going --  
18          MR. THOMAS: Counsel, I'm still a little  
19 confused as to what we're doing.  
20          JUDGE DOLAN: Are you going to verify those  
21 documents --  
22          MS. SATTER: Oh, I thought I did. I'm sorry.

1 BY MS. SATTER:

2 Q Mr. Fruehe, can you look at the documents  
3 that I've handed you, one being Chicago Partners  
4 invoices, which was previously marked as AG  
5 Cross-Exhibit, I believe, 18.

6 Can you verify that those were  
7 produced by Commonwealth Edison in response to DLH  
8 1.04.

9 A Yes, they were.

10 Q Okay. And can you please take a look at  
11 the other set of documents I gave you, which is  
12 marked as AG Cross-Exhibit I believe it's 21. And  
13 those are invoices from Sullivan & Associates.

14 And can you verify that, in fact,  
15 those represent documents produced by Commonwealth  
16 Edison, again, in response to DLH 1.04.

17 A Yes, they are.

18 Q Okay. Thank you.

19 Now, Mr. Fruehe, I asked you  
20 previously about small C&I and large C&I migration.

21 A Yes.

22 Q And we talked a little bit about the loads

1     for each of those customer classes.

2                     Can you take a look at what I've

3     marked as AG Cross-Exhibit 33 being the response to

4     AG Data Request 13.06. And can you verify that this

5     is the response that the Company provided in response

6     to this request showing the kilowatt hours per

7     customer -- kilowatt -- I'm sorry -- kilowatt hours

8     average customer kilowatt hours per customer for

9     these three customer classes.

10            A     I'm sorry. You said AG Cross-Exhibit 33?

11            Q     Yeah, we're 33.

12            A     I'm sorry. I --

13            Q     You lost me there?

14            A     -- must have just lost it here.

15            Q     Okay. So I'm asking you --

16            JUDGE DOLAN: It's this document.

17            MS. SATTER: I have an extra. You're the one

18     that has to see it.

19     BY MS. SATTER:

20            Q     So I'm just asking you to verify that this

21     is, in fact, the response to AG Data Request 13.06

22     showing kilowatt hours, average number of customers



1     and kilowatt hours per customer 2009 and then 2010  
2     forecast.

3             A     Yes, that's what it shows.

4             MS. SATTER:   Thank you.

5                     At this point I'd like to move for the  
6     admission of the AG cross-exhibits, that would be AG  
7     Cross-Exhibit 27 through 33.

8                     And I have no further questions for  
9     Mr. Fruehe.

10            JUDGE DOLAN:   Any objections?

11            MR. THOMAS:   Let me just check through our --

12            JUDGE SAINSOT:  Those are 27 through 33?

13            MS. SATTER:   Yes, ma'am.

14            JUDGE SAINSOT:  Mr. Thomas?

15            MR. THOMAS:   Just making sure I have all of  
16     them in front of me so I can...

17            JUDGE SAINSOT:  Take your time.

18            MR. THOMAS:   And then I gather that AG  
19     Cross-Exhibits 18 and 21 are either already in the  
20     record or you're not offering them; is that correct?

21            MS. SATTER:   Actually, I should request that  
22     they be admitted for the truth of the matter.  They

1     were admitted previously solely for impeachment  
2     because the witness had not produced them. And so  
3     this witness verified that they were the true  
4     answers.

5             JUDGE SAINSOT: And these are the two invoices,  
6     the one from Sullivan's and the other one from  
7     Chicago Partners?

8             MR. THOMAS: Correct.

9             MS. SATTER: Correct.

10            MR. THOMAS: No objection. And we have no  
11     objection to the other exhibits that the AG moved  
12     into evidence.

13            JUDGE DOLAN: And just for clarification  
14     purposes on AG 30 we should take off the other pages;  
15     right? You only just want to put in 16.01 -- the  
16     response to DLH 16.01?

17            MR. THOMAS: Correct, because this is the very  
18     issue that I raised earlier.

19            JUDGE SAINSOT: Okay.

20            JUDGE DOLAN: So the other pages are already in  
21     pursuant to Staff's agreement.

22            JUDGE SAINSOT: And just so we're clear, the

1 data request response regarding 16.01 is just the top  
2 page.

3 JUDGE DOLAN: Correct.

4 MS. SATTER: It's just a one-page answer.

5 JUDGE SAINSOT: Right.

6 JUDGE DOLAN: All right. Then subject to that,  
7 then your motion's granted and 27 through 33 -- AG  
8 Cross-Exhibits 27 through 33 will be admitted into  
9 the record.

10 MS. SATTER: Thank you.

11 (Whereupon, AG Cross-Exhibit  
12 Nos. 27 through 33 were  
13 admitted into evidence.)

14 JUDGE SAINSOT: And for the record, 18 and 21,  
15 which were previously designated as impeachment only,  
16 are now nonimpeachment substantive evidence.

17 MR. THOMAS: Correct.

18 JUDGE DOLAN: Okay. So, Staff, are we ready to  
19 go?

20 MS. McNEILL: Staff's ready.

21

22

1 CROSS-EXAMINATION

2 BY

3 MS. McNEILL:

4 Q Hello, Mr. Fruehe. My name's Megan McNeill  
5 and I represent Staff.

6 A Good afternoon.

7 Q Good afternoon.

8 If I could first direct you to your  
9 Exhibit 57.7, which is attached to your surrebuttal  
10 testimony.

11 MR. THOMAS: Excuse me, Counsel, which page?

12 MS. McNEILL: It's ComEd Exhibit 56.7 attached  
13 to his surrebuttal testimony.

14 MR. THOMAS: Thank you.

15 BY MS. McNEILL:

16 Q Mr. Fruehe, can you indicate the total  
17 PORCB -- which stands for purchase of receivables  
18 consolidated billing -- costs that the Company is  
19 estimating through December 2010.

20 A That would be on Line 8, that 16,622,000.

21 Q And of that amount, the Company has offered  
22 an alternate to its additional proposal that only

1     6,842,000 should be recovered in rate base in this  
2     proceeding; is that correct?

3             A     We've offered that the proposal that the  
4     \$6.8 million you referred to of capital additions as  
5     well as the deferred O&M of 780,000 be included in  
6     rate base -- I'm sorry. Scratch that, please.

7                     That is the non-jurisdictional amount,  
8     that would be the amount pulled out of rate base. So  
9     the -- yeah, the correct amount is 6842. You're  
10    correct. I was looking at the wrong line.

11            Q     Okay. Thank you.

12            JUDGE SAINSOT: Where are you referring?

13            MS. McNEILL: I'm sorry?

14            JUDGE SAINSOT: Where were you referring,  
15    again? I'm sorry.

16            MS. McNEILL: It's ComEd Exhibit 56.7, it's  
17    attached to Mr. Fruehe's surrebuttal testimony.

18            JUDGE SAINSOT: Okay. Thank you.

19    BY MS. McNEILL:

20            Q     Mr. Fruehe, and that would indicate that  
21    the Company would be referring 9,780,000 through the  
22    consolidated billing adjustment under Rider RCA; is

1       that correct?

2           A       That amount would be removed from rate base  
3       and collected through the rider. I believe there'd  
4       be a split between Rider RCA and the amount that we  
5       charged the RESSs. I don't know the exact amount,  
6       though.

7           Q       Okay.

8           JUDGE SAINSOT: And Rider RCA, could you  
9       explain what that is.

10          MS. McNEILL: And Rider RCA is retail customer  
11       assessments.

12       BY MS. McNEILL:

13          Q       You were a witness for the Company -- or  
14       for ComEd in the PORCB docket, Docket No. 10-0138; is  
15       that correct?

16          A       Yes, I did provide some testimony.

17          Q       Are you familiar with the order in that  
18       docket and the Commission's conclusion regarding the  
19       amount of costs to be recovered through the  
20       consolidated billing adjustment rate for the first  
21       application period?

22          A       In general, yes.

1           Q     Mr. Fruehe, do you know when the Company  
2     will be filing the information sheets reflecting the  
3     consolidated billing adjustment for the first  
4     application period?

5           A     I don't know the exact date of that.

6           Q     Subject to check, would you say that it  
7     would need to be filed before April 1st, which would  
8     be the first month that it would be charged?

9           A     Yes.

10          MS. McNEILL:   And let me -- I'm not going to  
11     introduce this as a cross-exhibit but just as a  
12     refresher for the witness.

13                         May I approach?

14          JUDGE SAINSOT:   Yes, you may.

15     BY MS. McNEILL:

16          Q     I'm just going to show you a little excerpt  
17     of the order in 10-0138.   And if you could look at  
18     Pages 37 to 38 of the order.   It's the last paragraph  
19     on Page 37.   It's the last sentence that continues on  
20     to Page 38.

21                         Could you verify that the language  
22     there limits the amount to be recovered through the

1 consolidated billing adjustment to 12,596,214.

2 A That's correct.

3 Q If the Commission adopts the Company's  
4 alternate position regarding PORCB costs in this  
5 case, what amount would the Company use in its  
6 calculation of consolidated billing adjustment for  
7 the first application period?

8 A I'm not that familiar with the mechanics of  
9 PORCB, so I kind of forget exactly how that works.  
10 But it would be certainly no more than the 9.78  
11 million on 56.7.

12 Q But in the Company's alternative proposal  
13 they're reducing the rate base by 9,780,000; is that  
14 correct?

15 A That's right.

16 Q And if the Company is indicating that  
17 that's their rate base reduction if they collected  
18 more than the 9,780,000, wouldn't it be fair to say  
19 that the Company would be over-collecting the costs  
20 for PORCB as they have been presented in this rate  
21 case?

22 MR. THOMAS: Could you repeat that for the



1 record.

2 MS. McNEILL: Sure.

3 BY MS. McNEILL:

4 Q The Company has said in its alternate  
5 proposal that they would reduce -- or make a rate  
6 base reduction of 9,780,000 if the Company intends to  
7 recover more in Rider RCA, wouldn't the Company be  
8 over collecting the costs of PORCB as they have been  
9 presented in this rate case?

10 A I don't really agree with that. I guess  
11 what we're proposing here is that due to some of the  
12 questions that had been raised about what is the  
13 appropriate amount to include in -- or to collect  
14 through PORCB, we've made this adjustment.

15 It could be retail office and the CDW  
16 costs, I believe, that Mr. Fein has questioned  
17 whether or not those should be included in --  
18 properly included in base rates for PORCB. There's  
19 some, I believe, gray areas around those costs. And  
20 since those would be a typical rate base investment,  
21 I don't know -- I guess I don't follow how we would  
22 over-recover anything here if we're including that in

1 rate base and the rest of the rider. I don't quite  
2 follow.

3 Q But you do agree that there is a 12,596,214  
4 limit -- or cap on the first application period; is  
5 that correct?

6 A I agree that the first application period  
7 is capped at that amount, the amount to go through  
8 the rider, yes.

9 Q Would you agree that the Company should  
10 recover no more than the total of 12,596,214 between  
11 the combination of base rates and Rider PORCB?

12 A No.

13 MR. THOMAS: Asked and answered.

14 JUDGE SAINSOT: Was that an objection?

15 MR. THOMAS: It was; but the witness said "no,"  
16 so leave it on the record.

17 BY MS. McNEILL:

18 Q So it's the Company's position that they  
19 can recover more between -- more than the 12,596,214  
20 between base rates and Rider PORCB?

21 A It's the Company's position that the total  
22 amount of PORCB costs is -- are reasonable costs.

1 And it's our position that we can -- it's our  
2 proposal to include some of those costs in rate base  
3 and some of those costs through PORCB.

4 Q If I can now direct you to your ComEd  
5 Exhibit 56.0, third revised, which is your  
6 surrebuttal third revised. And on Pages 25 through  
7 29 --

8 A Okay.

9 Q -- on those pages, you indicate your  
10 disagreement with Staff Witness Tolsdorf's adjustment  
11 for AMI costs from December 2010 through June 2011,  
12 which Mr. Tolsdorf believes are not known and  
13 measurable; is that correct?

14 A That's correct. I don't agree with his  
15 position.

16 Q I'm sorry. What was the last part of  
17 your...?

18 A I'm sorry. That's correct, I don't agree  
19 with his position.

20 Q Okay. Thank you.

21 On Page 27 of your surrebuttal at Line  
22 569 you state, The bridge tariff clearly states that

1 ComEd's otherwise unrecoverable O&M expenses will be  
2 recovered through application of the bridge tariff;  
3 is that correct?

4 A That's correct.

5 Q Is it your understanding that the AMI costs  
6 that ComEd proposes to recover in this rate case  
7 pursuant to the bridge tariff are not subject to  
8 review in this case?

9 A It's my position that the costs that's laid  
10 out are following the order that we received in P- --  
11 in the -- in Rider AMP docket, which -- although not  
12 specifically as I've laid out in my testimony, did  
13 tend -- did intend to recover those types of costs.

14 Q I don't think I got an answer "yes" or "no"  
15 whether or not you believe the AMI costs that ComEd  
16 proposed to recover in this case pursuant to the  
17 bridge tariff, whether or not they're subject to  
18 review in this rate case.

19 A Well, I believe all costs that we've  
20 included in the case should be subject to review. I  
21 think the issue here, though, is are we able to  
22 provide invoices for the amounts that run through

1 June, which is not possible yet because we have not  
2 fully incurred those costs.

3 Q Beginning on Line 571 on Page 27 of your  
4 surrebuttal testimony you quote from the Company's  
5 verified petition for special permission in Docket  
6 10-0597; is that correct?

7 A That's correct.

8 Q Now, I'll show you what's been marked as  
9 Staff Cross-Exhibit 16, and this is a copy of the  
10 Company's petition in 10-0597 along with Appendices A  
11 and B and also the tariff pages that were filed by  
12 the Company on December 9th, 2010, in compliance with  
13 the Commission's final order in 10-0597.

14 (Whereupon, Staff Cross-Exhibit  
15 No. 16 was marked for  
16 identification.)

17 BY MS. McNEILL:

18 Q Is this the petition you quoted on Pages 27  
19 and 28 of your surrebuttal testimony?

20 A Yes, it is.

21 Q If you could refer to Page 1 of the  
22 petition, in the last paragraph. There ComEd states

1 the following: The bridge tariff addresses that  
2 dilemma. It does not add to ComEd's costs, allow  
3 ComEd to recover any costs that the Commission has  
4 not already authorized or reduced the authority of  
5 the Commission to review those costs.

6 Is that correct?

7 A Yes, that's correct.

8 Q If you could now turn to Paragraph 5 on  
9 Page 3.

10 A Okay. Okay.

11 Q And in there ComEd states, The proposed  
12 bridge tariff is a solution. It allows ComEd the  
13 opportunity to recover many, parens, not all, of its  
14 otherwise unrecoverable AMI operating costs through  
15 base rates proposed in ComEd's rate case. This is  
16 possible because the unrecovered expenses of the  
17 pilot were incurred during the 2009 test year or  
18 during the period for which known and measurable  
19 adjustments can be made and because the AMI assets  
20 can be properly placed into rate base.

21 Is that correct?

22 A Yes, that's correct.

1           Q     I'm now going to show you Section 287.40 of  
2     the Commission's Administrative Rules, which is the  
3     rule regarding pro forma adjustments to historical  
4     test year data. And I'm not going to be marking this  
5     as a cross-exhibit.

6                     Do you understand this to be the  
7     provision in the Commission's test year rules that  
8     permits the base rates recovery of AMI operating  
9     costs incurred during the period for which known and  
10    measurable adjustments can be made?

11           A     I'm sorry. Can you repeat the question.

12           Q     Sure.

13                     Do you understand this to be the  
14    provision in the Commission's test year rules that  
15    permits the base rates recovery of the AMI operating  
16    costs incurred during the period for which known and  
17    measurable adjustments can be made?

18           A     I see this as the document that talks about  
19    pro forma adjustments. It doesn't say anything about  
20    AMI itself.

21           Q     Is it your understanding that when a  
22    utility uses a historical test year and it proposes

1 pro forma adjustments, that those adjustments must be  
2 known and measurable?

3 A Yes.

4 MS. McNEILL: At this time I have a couple  
5 confidential questions. If we could go into in  
6 camera.

7 (Whereupon, there was a change  
8 of reporter.)

9 (Whereupon, the following  
10 proceedings were held in  
11 camera.)

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